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DEPT. OF JUSTICE, EHRD
ENVIRONMENT DIVISION

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13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**

15 ORANGE COUNTY COASTKEEPER, a
16 California non-profit corporation,

17 Plaintiff,

18 v.

19 FOX HILLS CASTING INDUSTRIES,
20 INC., a Delaware corporation,

21 Defendant.

Civil Case No.:

22 **COMPLAINT FOR**
23 **DECLARATORY AND**
24 **INJUNCTIVE RELIEF AND**
25 **CIVIL PENALTIES**

26 **(Federal Water Pollution Control**
27 **Act, 33 U.S.C. §§ 1251 *et seq.*)**

1 Orange County Coastkeeper (“Coastkeeper”), by and through its counsel, hereby
2 allege:

3 **I. JURISDICTION AND VENUE**

4 1. This is a civil suit brought under the citizen suit enforcement provision of
5 the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.* (“Clean Water Act”
6 or “CWA”). *See* 33 U.S.C. § 1365. This Court has subject matter jurisdiction over the
7 parties and this action pursuant to 33 U.S.C. § 1365(a)(1) and 28 U.S.C. §§ 1331 and
8 2201 (an action for declaratory and injunctive relief arising under the Constitution and
9 laws of the United States).

10 2. On December 13, 2016, Coastkeeper issued a sixty (60) day notice of intent
11 to sue letter (“Notice Letter”) to Fox Hills Casting Industries, Inc. A/K/A Fox Hills
12 Industries, Inc. (“Defendant”) for its violations of California’s General Permit for
13 Discharges of Storm Water Associated with Industrial Activities (*National Pollutant*
14 *Discharge Elimination System (NPDES) General Permit No. CAS000001, State Water*
15 *Resources Control Board Water Quality Order No. 92-12-DWQ, as amended by Order*
16 *No. 97-03-DWQ*) (“1997 Permit”) and Order No. 2014-0057-DWQ (“2015 Permit”)
17 (collectively, hereinafter referred to as the “Storm Water Permit”) and the Clean Water
18 Act. The Notice Letter informed Defendant of Coastkeeper’s intent to file suit against it
19 to enforce the Storm Water Permit and the Clean Water Act.

20 3. The Notice Letter was also sent to the registered agent for Defendant, the
21 Administrator of the United States Environmental Protection Agency (“EPA”), the
22 Administrator of EPA Region IX, the Executive Director of the State Water Resources
23 Control Board (“State Board”), and the Executive Officer of the Regional Water Quality
24 Control Board, Santa Ana Region (“Regional Board”), as required by 33 U.S.C.
25 § 1365(b)(1)(A); *see also* 40 C.F.R. § 135.2(a)(1). The Notice Letter is attached hereto as
26 Exhibit A and is incorporated herein by reference.

27 4. More than sixty (60) days have passed since the Notice Letter was served on
28 Defendant and the State and Federal agencies. Coastkeeper is informed and believes, and

thereon alleges, that neither the EPA, nor the State of California has commenced or is diligently prosecuting an action to redress the violations alleged in this complaint. *See* 33 U.S.C. § 1365(b)(1)(B). This action is not barred by any prior administrative penalty under Section 309(g) of the CWA. 33 U.S.C. § 1319(g).

5. Venue is proper in the Central District of California pursuant to Section 505(c)(1) of the CWA, 33 U.S.C. § 1365(c)(1), because the sources of the violations are located within this judicial district.

6. Plaintiff also seeks relief from Defendant's violations of the procedural and substantive requirements of Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a).

II. INTRODUCTION

7. With every rainfall event, hundreds of millions of gallons of polluted rainwater, originating from industrial operations such as the Fox Hills Facility referenced herein, pour into the storm drains and local waterways. The consensus among regulatory agencies and water quality specialists is that storm water pollution accounts for more than half of the total pollution entering marine and river environments each year. These surface waters Receiving Waters are ecologically sensitive areas. Although pollution and habitat destruction have drastically diminished once-abundant and varied fisheries, these waters are still essential habitat for dozens of fish and bird species as well as macro-invertebrate and invertebrate species. Storm water and non-storm water contains sediment, heavy metals, such as aluminum, chromium, copper, lead, mercury, nickel, tin, and zinc, as well as, high concentrations of nitrate and nitrite, and other pollutants. Exposure to polluted storm water harms the special aesthetic and recreational significance that the surface waters have for people in the surrounding communities. The public's use of the surface waters exposes many people to toxic metals and other contaminants in storm water and non-storm water discharges. Non-contact recreational and aesthetic opportunities, such as wildlife observation, are also impaired by polluted discharges to the Receiving Waters.

1 8. High concentrations of total suspended solids (“TSS”) degrade optical water
2 quality by reducing water clarity and decreasing light available to support photosynthesis.
3 TSS has been shown to alter predator-prey relationships (for example, turbid water may
4 make it difficult for fish to hunt prey). Deposited solids alter fish habitat, aquatic plants,
5 and benthic organisms. TSS can also be harmful to aquatic life because numerous
6 pollutants, including metals and polycyclic aromatic hydrocarbons (“PAHs”), are
7 absorbed onto TSS. Thus, higher concentrations of TSS results in higher concentrations
8 of toxins associated with those sediments. Inorganic sediments, including settleable
9 matter and suspended solids, have been shown to negatively impact species richness,
10 diversity, and total biomass of filter feeding aquatic organisms on bottom surfaces.

11 9. Storm water discharged with high pH can damage the gills and skin of
12 aquatic organisms and cause death at levels above 10 standard units. The pH scale is
13 logarithmic and the solubility of a substance varies as a function of the pH of a solution.
14 A one whole unit change in SU represents a tenfold increase or decrease in ion
15 concentration. If the pH of water is too high or too low, the aquatic organisms living
16 within it will become stressed or die.

17 10. This complaint seeks a declaratory judgment, injunctive relief, the
18 imposition of civil penalties, and the award of costs, including attorney and expert
19 witness fees, for Defendant’s substantive and procedural violations of the Storm Water
20 Permit and the Clean Water Act resulting from Defendant’s operations at 5831 Research
21 Drive, Huntington Beach, California 92649 (“Fox Hills Facility” or “Facility”).¹

22 11. Coastkeeper specifically alleges that Defendant’s discharges of pollutants
23 from the Fox Hills Facility into waters of the United States; violations of the filing,
24 monitoring and reporting, and best management practice requirements; and violations of
25

26
27 ¹ The Fox Hills Facility is described in Section V below, and in the Notice Letter attached
28 hereto as Exhibit A.

1 other procedural and substantive requirements of the Storm Water Permit and the Clean
2 Water Act are ongoing and continuous.

3 **III. PARTIES**

4 **A. Orange County Coastkeeper**

5 12. Orange County Coastkeeper is a non-profit public benefit corporation
6 organized under the laws of the State of California. Orange County Coastkeeper's office
7 is located at 3151 Airway Avenue, Suite F-110, Costa Mesa, California 92626.

8 13. Orange County Coastkeeper has over 2,000 members who live and/or
9 recreate in and around Orange County. Coastkeeper is dedicated to the preservation,
10 protection, and defense of the environment, wildlife, and natural resources of local
11 surface waters. To further these goals, Coastkeeper actively seeks federal and state
12 agency implementation of the Clean Water Act and, where necessary, directly initiates
13 enforcement actions on behalf of itself and others.

14 14. Coastkeeper members live, work, travel near, recreate in, use and enjoy the
15 waters near the Fox Hills Facility, including the Seal Beach National Wildlife Refuge,
16 Sunset Bay – Huntington Harbor, and Anaheim Bay for fishing, boating, swimming, bird
17 watching, picnicking, viewing wildlife, sailing, kayaking, hiking, and engaging in
18 scientific study, including monitoring activities.

19 15. Discharges of polluted storm water and non-storm water from the Fox Hills
20 Facility degrade water quality and harm aquatic life in the Seal Beach National Wildlife
21 Refuge, Sunset Bay – Huntington Harbor, and Anaheim Bay, and impair Coastkeeper's
22 members' use and enjoyment of those waters.

23 16. The violations of the Storm Water Permit and Clean Water Act at the Fox
24 Hills Facility are ongoing and continuous. Thus, the interests of Coastkeeper's members
25 have been, are being, and will continue to be adversely affected by Defendant's failure to
26 comply with the Storm Water Permit and the Clean Water Act.

27 17. Continuing commission of the acts and omissions alleged above will
28 irreparably harm Plaintiff and its members, for which they have no plain, speedy or

adequate remedy at law.

B. The Fox Hills Facility Owner and/or Operator

18. Coastkeeper is informed and believes, and thereon alleges, that Fox Hills Casting Industries, Inc. is an owner of the Fox Hills Facility.

19. Coastkeeper is informed and believes, and thereon alleges, that Defendant has owned the Fox Hills Facility since at least March 18, 1992.

20. Coastkeeper is informed and believes, and thereon alleges, that Defendant is an operator of the Fox Hills Facility.

21. Coastkeeper is informed and believes, and thereon alleges, Defendant has operated the Fox Hills Facility since at least March 18, 1992.

22. Coastkeeper refers to Defendant Fox Hills Casting Industries, Inc. as the "Fox Hills Facility Owner and/or Operator."

23. Coastkeeper is informed and believes, and thereon alleges, that Defendant is an active Delaware corporation registered in California.

24. Coastkeeper is informed and believes, and thereon alleges, that the name and address of the Registered Agent for Fox Hills Casting Industries, Inc. is Frank Reilly, located at 5831 Research Drive, Huntington Beach, California, 92649.

IV. STATUTORY BACKGROUND

A. The Clean Water Act.

25. Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant into waters of the United States unless the discharge complies with various enumerated sections of the CWA. Among other things, section 301(a) prohibits discharges not authorized by, or in violation of, the terms of a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to section 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342(b).

26. Section 402(p) of the CWA establishes a framework for regulating municipal and industrial storm water discharges under the NPDES program. 33 U.S.C. § 1342(p). States with approved NPDES permit programs are authorized by Section 402(p)

1 to regulate industrial storm water discharges through individual permits issued to
2 dischargers and/or through the issuance of a single, statewide general permit applicable to
3 all industrial storm water dischargers. 33 U.S.C. § 1342.

4 27. Section 301(b) of the Clean Water Act requires that, by March 31, 1989, all
5 point source dischargers, including those discharging polluted storm water, must achieve
6 technology-based effluent limitations by utilizing Best Available Technology
7 Economically Achievable (“BAT”) for toxic and nonconventional pollutants and the Best
8 Conventional Pollutant Control Technology (“BCT”) for conventional pollutants. *See* 33
9 U.S.C. § 1311(b); 40 C.F.R. § 125.3(a)(2)(ii)-(iii).

10 28. The Clean Water Act requires point source discharges of pollutants to
11 navigable waters be regulated by an NPDES permit. 33 U.S.C. § 1311(a); *see* 40 C.F.R. §
12 122.26(c)(1).

13 29. The term “pollutant” includes “dredged spoil, solid waste, incinerator
14 residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological
15 materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar
16 dirt and industrial, municipal, and agricultural waste discharged into water.” 33 U.S.C. §
17 1362(6); *see* 40 C.F.R. § 122.2.

18 30. The “discharge of a pollutant” means, among other things, “any addition of
19 any pollutant to navigable waters from any point source.” 33 U.S.C. § 1362(12); *see* 40
20 C.F.R. § 122.2.

21 31. The term “point source” is defined as “any discernible, confined and discrete
22 conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well,
23 discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel
24 or other floating craft, from which pollutants are or may be discharged.” 33 U.S.C. §
25 1362(14); *see* 40 C.F.R. § 122.2.

26 32. “Navigable waters” means “the waters of the United States.” 33 U.S.C.
27 1362(7).

28 33. “Waters of the United States” are defined as “navigable waters,” and “all

1 waters which are currently used, were used in the past, or may be susceptible to use in
2 interstate or foreign commerce, including waters which are subject to the ebb and flow of
3 the tide.” 33 U.S.C. § 1362(7).

4 34. The EPA promulgated regulations for the section 402 NPDES permit
5 program defining “waters of the United States.” *See* 40 C.F.R. § 122.2. The EPA
6 interprets waters of the United States to include not only traditionally navigable waters
7 but also other waters, including waters tributary to navigable waters, wetlands adjacent to
8 navigable waters, and other waters including intermittent streams that could affect
9 interstate commerce.

10 35. The Clean Water Act confers jurisdiction over non-navigable waters that are
11 tributaries to traditionally navigable waters where the non-navigable water at issue has a
12 significant nexus to the navigable water. *See Rapanos v. United States*, 547 U.S. 715
13 (2006); *see also* *N. Cal. River Watch v. City of Healdsburg*, 496 F.3d 993 (9th Cir. 2007).

14 36. A significant nexus is established if the “[receiving waters], either alone or
15 in combination with similarly situated lands in the region, significantly affect the
16 chemical, physical, and biological integrity of other covered waters.” *Rapanos*, 547 U.S.
17 at 779; *N. Cal. River Watch*, 496 F.3d at 999-1000.

18 37. A significant nexus is also established if waters that are tributary to
19 navigable waters have flood control properties, including functions such as the reduction
20 of flow, pollutant trapping, and nutrient recycling. *Rapanos*, 547 U.S. at 782; *N. Cal.*
21 *River Watch*, 496 F.3d at 1000-1001.

22 38. Section 505(a)(1) and section 505(f) of the Clean Water Act provide for
23 citizen enforcement actions against any “person” who is alleged to be in violation of an
24 “effluent standard or limitation . . . or an order issued by the Administrator or a State with
25 respect to such a standard or limitation.” *See* 33 U.S.C. §§ 1365(a)(i) and 1365(f).

26 39. Defendant is a “person” within the meaning Section 502(5) of the Clean
27 Water Act. *See* 33 U.S.C. § 1362(5).

28 40. An action for injunctive relief is authorized under section 505(a) of the

1 Clean Water Act. *See* 33 U.S.C. § 1365(a).

2 41. Pursuant to sections 309(d) and 505 of the Clean Water Act, each separate
3 violation of the CWA occurring before November 2, 2015 subjects the violator to a
4 penalty of up to \$37,500 per day; violations occurring after November 2, 2015 and
5 assessed on or after August 1, 2016 subjects the violator to a penalty of up to \$51,570 per
6 day. *See* 33 U.S.C. §§ 1319(d) and 1365(a); 40 C.F.R. § 19.4 (Adjustment of Civil
7 Monetary Penalties for Inflation).

8 42. Section 505(d) of the Clean Water Act allows prevailing or substantially
9 prevailing parties to recover litigation costs, including attorneys' fees, experts' fees, and
10 consultants' fees. *See* 33 U.S.C. § 1365(d).

11 **B. California's Storm Water Permit.**

12 43. Section 402(b) of the Clean Water Act allows each state to administer its
13 own EPA-approved NPDES permit program for regulating the discharge of pollutants,
14 including discharges of polluted storm water. *See* 33 U.S.C. § 1342(b). States with
15 approved NPDES permit programs are authorized by section 402(b) to regulate industrial
16 storm water discharges through individual NPDES permits issued to dischargers and/or
17 through the issuance of a statewide general NPDES permit applicable to all industrial
18 storm water dischargers. *See Id.*

19 44. Pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, the Administrator of
20 the EPA has authorized California to issue NPDES permits, including general NPDES
21 permits.

22 45. The Storm Water Permit is an NPDES permit issued pursuant to CWA
23 section 402(p). 33 U.S.C. § 1342(p). Violations of the Storm Water Permit are also
24 violations of the CWA. 1997 Permit, Section C(1); 2015 Permit, Section XXI(A).

25 46. California has designated the State Water Resources Control Board ("State
26 Board") and the Regional Water Quality Control Boards to administer its NPDES
27 program. *City of Rancho Cucamonga v. Regional Water Quality Control Bd.*, 135 Cal.
28 App. 4th 1377, 1380-81 (2006).

1 47. In California, the State Board is charged with regulating pollutants to protect
2 California's water resources. *See* Cal. Water Code § 13001.

3 48. Section 303 of the CWA, 33 U.S.C. § 1313, requires states to adopt Water
4 Quality Standards, including water quality objectives and beneficial uses for navigable
5 waters of the United States. The CWA prohibits discharges from causing or contributing
6 to a violation of such state Water Quality Standards. *See* 33 U.S.C. § 1313(b)(1)(c); 40
7 C.F.R. §§ 122.4(a), (d); 40 C.F.R. §§ 122.44(D)(1).

8 49. The State Board elected to issue a statewide general permit for industrial
9 discharges. The State Board issued the Storm Water Permit on or about November 19,
10 1991, modified the Storm Water Permit on or about September 17, 1992, and reissued the
11 Storm Water Permit on or about April 17, 1997, pursuant to Section 402(p) of the Clean
12 Water Act, 33 U.S.C. § 1342(p).

13 50. On July 1, 2015 the 2015 Permit became effective, and was issued as
14 NPDES No. CAS000001 (the same NPDES permit number as the 1997 Permit). 2015
15 Permit, Section I(A) (Finding 4). The 2015 Permit superseded the 1997 Permit except for
16 enforcement purposes. *Id.* at Section I(A) (Finding 6). The substantive requirements of the
17 2015 Permit are the same or more stringent than the requirements of 1997 Permit.

18 51. In order to discharge storm water lawfully in California, industrial
19 dischargers must secure coverage under the Storm Water Permit and comply with its
20 terms, or obtain and comply with an individual NPDES permit. 1997 Permit, p. II-V;
21 2015 Permit, Section I(A) (Findings 8, 12). Prior to beginning industrial operations,
22 dischargers are required to apply for coverage under the Storm Water Permit by
23 submitting a Notice of Intent to Comply with the Terms of the General Permit to
24 Discharge Storm Water Associated with Industrial Activity ("NOI") to the State Board.
25 *See* 1997 Permit, Provision E(1), Finding 3; 2015 Permit, Section I(A) (Finding 17),
26 Section II(B).

27 52. Section 505(a)(1) of the CWA, 33 U.S.C. § 1365(a)(1), provides for citizen
28 enforcement actions against any "person" who is alleged to be in violation of an "effluent

1 standard or limitation . . . or an order issued by the Administrator or a State with respect
2 to such a standard or limitation.” *See* 33 U.S.C. §§ 1365(a)(i), 1365(f).

3 **C. The Storm Water Permit’s Discharge Prohibitions, Effluent**
4 **Limitations, and Receiving Water Limitations**

5 53. The Storm Water Permit contains certain absolute prohibitions. The Storm
6 Water Permit prohibits the direct or indirect discharge of materials other than stormwater
7 (“non-stormwater discharges”), which are not otherwise authorized by an NPDES permit,
8 to the waters of the United States. 1997 Permit, Discharge Prohibition A(1); 2015 Permit,
9 Discharge Prohibition III(B).

10 54. Effluent Limitation (B)(3) of the 1997 Permit and Effluent Limitation V(A)
11 of the 2015 Permit requires dischargers to reduce or prevent pollutants associated with
12 industrial activity in stormwater discharges through the implementation of Best Available
13 Technology Economically Achievable (“BAT”) for toxic or non-conventional pollutants,
14 and Best Conventional Pollutant Control Technology (“BCT”) for conventional
15 pollutants. Toxic pollutants are listed at 40 C.F.R. § 401.15 and include copper, lead, and
16 zinc, among others. Conventional pollutants are listed at 40 C.F.R. § 401.16 and include
17 biological oxygen demand (“BOD”), TSS, oil and grease (“O&G”), pH, and fecal
18 coliform.

19 55. Discharge Prohibition (A)(2) of the 1997 Permit and Discharge Prohibition
20 III(C) of the 2015 Permit prohibits stormwater discharges that cause or threaten to cause
21 pollution, contamination, or nuisance.

22 56. Under the CWA and the Storm Water Permit, dischargers must employ Best
23 Management Practices (“BMPs”) that constitute BAT and BCT to reduce or eliminate
24 stormwater pollution. 33 U.S.C. § 1311(b); 1997 Permit, Effluent Limitation B(3); 2015
25 Permit, Effluent Limitation V(A). EPA has developed benchmark levels (“Benchmarks”)
26 that are objective guidelines to evaluate whether a permittee’s BMPs achieve compliance
27 with the BAT/BCT standards. *See* Final National Pollutant Discharge Elimination System
28

1 (NPDES) General Permit for Storm Water Discharges From Industrial Activities (“Multi-
2 Sector Permit”), 80 Fed. Reg. 34,403, 34,405 (June 16, 2015); Multi-Sector Permit, 73
3 Fed. Reg. 56,572, 56,574 (Sept. 29, 2008); Multi-Sector Permit, 65 Fed. Reg. 64,746,
4 64,766-67 (Oct. 30, 2000).

5 57. The EPA established Parameter Benchmark Values for the following
6 parameters, among others, are as follows: pH – 6.0 – 9.0 standard units “s.u.”; TSS –
7 100 mg/L; Oil and Grease (“O&G”) – 15 mg/L; lead (“Pb”) – 0.069 mg/L; iron – 1.0
8 mg/L; nitrate plus nitrite as nitrogen (“N+N”) – 0.68 mg/L; aluminum (“Al”) – 0.75
9 mg/L; copper (“Cu”) – 0.0123 mg/L; and zinc – 0.117 mg/L. The 2015 Permit contains
10 Numeric Action Levels (“NALs”) for these same parameters that generally mirror the
11 Benchmark Values.

12 58. The 2015 Permit includes NALs. 2015 Permit, Section I(M) (Finding 62).
13 During the public commenting period, the State Board stated that “NALs are not
14 designed or intended to function as numeric technology-based effluent limitations.” State
15 Board 2012 Draft Industrial General Permit Response to Comments, Response #6 to
16 Comment #12; *see also* 2015 Permit Section I(M) (Finding 63).

17 59. Receiving Water Limitation C(1) of the 1997 Permit and Receiving Water
18 Limitation VI(B) of the 2015 Permit prohibit stormwater discharges from adversely
19 impacting human health or the environment.

20 60. Discharges with pollutant levels that exceed levels known to adversely
21 impact aquatic species and the environment are violations of the Storm Water Permit’s
22 Receiving Water Limitation.

23 61. Receiving Water Limitation C(2) of the 1997 Permit and Receiving Water
24 Limitation VI(A) of the 2015 Permit prohibit stormwater discharges that cause or
25 contribute to an exceedance of any “applicable Water Quality Standard in a Statewide
26 Water Quality Control Plan or the applicable Regional Board’s Basin Plan.”
27
28

1 62. Water Quality Standards (“WQS”) are pollutant concentration levels
2 determined by the State Board, the various regional boards, and the EPA to be protective
3 of the beneficial uses of the waters that receive polluted discharges.

4 63. The State of California regulates water quality through the State Board and
5 the nine Regional Boards. Each Regional Board maintains a separate Water Quality
6 Control Plan which contains WQS for water bodies within its geographic area.

7 64. The Water Quality Control Plan for the Santa Ana River Basin (Basin Plan),
8 California Regional Water Quality Control Board, Santa Ana Region, 3rd Ed., (Rev. June
9 2011) (“Basin Plan”) identifies the “Beneficial Uses” of water bodies in the region. The
10 existing and/or potential Beneficial Uses for Bolsa Chica Channel include, at a minimum:
11 warm freshwater habitat (WARM); and water contact recreation (REC1). The Beneficial
12 Uses for Sunset Bay – Huntington Harbor include: navigation (NAV); water contact
13 recreation (REC1); non-contact water recreation (REC2); commercial and sportfishing
14 (COMM); wildlife habitat (WILD); rare, threatened or endangered species (RARE);
15 spawning reproduction and development (SPWN); marine habitat (MAR); water contact
16 recreation (REC1); non-contact water recreation (REC2); warm freshwater habitat
17 (WARM); wildlife habitat (WILD); rare, threatened or endangered species (RARE);
18 spawning reproduction and development (SPWN); and marine habitat (MAR). The
19 Beneficial Uses for Anaheim Bay—Seal Beach National Wildlife Refuge include: water
20 contact recreation (REC1); non-contact water recreation (REC2); preservation of
21 biological habitats of special significance (BIOL); wildlife habitat (WILD); rare,
22 threatened or endangered species (RARE); spawning reproduction and development
23 (SPWN); marine habitat (MAR); and estuarine habitat (EST). The Beneficial Uses for
24 Anaheim Bay—Outer Bay include: water contact recreation (REC1); non-contact water
25 recreation (REC2); preservation of biological habitats of special significance (BIOL);
26 wildlife habitat (WILD); rare, threatened or endangered species (RARE); spawning
27 reproduction and development (SPWN); and marine habitat (MAR). *See* Basin Plan at
28 Table 3-1.

65. Surface waters that cannot support the Beneficial Uses of those waters listed in the Basin Plan are designated as impaired water bodies pursuant to section 303(d) of the Clean Water Act. According to the 2010 303(d) List of Impaired Water Bodies, Bolsa Chica Channel is impaired for ammonia, indicator bacteria, and pH.² Sunset Bay - Huntington Harbor is impaired for pathogens, copper, lead, chlordane, nickel, polychlorinated biphenyls, and sediment toxicity.³ Anaheim Bay – Outer Bay and Anaheim Bay – Seal Beach National Wildlife Refuge are impaired for dieldrin, nickel, polychlorinated biphenyls, and sediment toxicity.⁴

66. Discharges of pollutants at levels above WQS contribute to the impairment of the Beneficial Uses of the waters receiving the discharges in violation of the Storm Water Permit. The Basin Plan sets forth, among other things, narrative WQS for floating material, chemical oxygen demand, oil and grease, sediment, settleable matter, and suspended materials, toxic substances, and sets forth numeric WQS for chemical oxygen demand and pH. *see* Basin Plan, p. 4-6 4-18, and Table 4-1.

67. The Basin Plan provides that “[t]he pH of inland surface waters shall not be raised above 8.5 or depressed below 6.5 as a result of controllable water quality factors.”

68. The Basin Plan provides that “[t]he pH of bay or estuary waters shall not be raised above 8.6 or depressed below 7.0 as a result of controllable water quality factors; ambient pH levels shall not be changed more than 0.2 units.”

69. The Basin Plan includes a toxicity standard which states that “[t]he concentrations of toxic pollutants in the water column, sediments or biota shall not adversely affect beneficial uses.”

70. In addition, EPA has promulgated WQS for toxic priority pollutants in all California water bodies (“California Toxics Rule” or “CTR”), which apply to the

² 2012 Integrated Report – All Assessed Waters, *available at* http://www.waterboards.ca.gov/water_issues/programs/tmdl/2012state_ir_reports/category5_report.shtml (last accessed on December 7, 2016).

³ *Id.*

⁴ *Id.*

1 Receiving Waters, unless expressly superseded by the Basin Plan. 65 Fed. Reg. 31,682
2 (May 18, 2000); 40 C.F.R. § 131.38.

3 71. The CTR includes numeric criteria set to protect human health and the
4 environment in the State of California. *See* Establishment of Numeric Criteria for Priority
5 Toxic Pollutants for the State of California Factsheet, EPA-823-00-008 (April 2000), and
6 sets forth lower numeric limits for zinc and other pollutants. CTR criteria can be as low
7 as 0.067 mg/L for zinc in freshwater surface waters with water hardness calculation of 50
8 mg/L.⁵

9 72. The CTR includes further numeric criteria set to protect human health and
10 the environment in the State of California. *See* Establishment of Numeric Criteria for
11 Priority Toxic Pollutants for the State of California Factsheet, EPA-823-00-008 (April
12 2000).

13 73. Discharges with pollutant levels in excess of the CTR criteria, the Basin
14 Plan, and/or other applicable WQS are violations of Receiving Water Limitation C(2) of
15 the 1997 Permit and Section VI(A) of the 2015 Permit.

16 74. Receiving Water Limitations C(3) and C(4) of the 1997 Permit require a
17 permittee whose discharges exceed the Storm Water Permit's Receiving Water
18 Limitations to submit a written report identifying what additional BMPs will be
19 implemented to achieve water quality standards.

20 **D. The Storm Water Permit's Storm Water Pollution Prevention Plan**
21 **Requirements**

22 75. Dischargers must develop and implement a Storm Water Pollution
23 Prevention Plan ("SWPPP") at the time industrial activities begin. 1997 Permit, Section
24 A(1)(a) and E(2); 2015 Permit, Sections I(I) (Finding 54), X(B). The SWPPP must
25 identify and evaluate sources of pollutants associated with industrial activities that may

26 ⁵ The CTR numeric limits, or "criteria," are expressed as dissolved metal concentrations
27 in the CTR, but the Storm Water Permit required permittees to report their sample results
28 as total metal concentrations. *See* 1997 Permit § B(10)(b); 2015 Permit, Attachment H at 18.

1 affect the quality of stormwater and authorized non-stormwater discharges from the
2 facility. 1997 Permit, Section A(2); 2015 Permit, Section X(G). The SWPPP must
3 identify and evaluate sources of pollutants associated with industrial activities that may
4 affect the quality of stormwater and authorized non-stormwater discharges from the
5 facility. 1997 Permit, Section A(2); 2015 Permit, Section X(G). The SWPPP must
6 identify and implement site-specific BMPs to reduce or prevent pollutants associated
7 with industrial activities in stormwater and authorized non-stormwater discharges. 1997
8 Permit, Section A(2); 2015 Permit, Section X(H). The SWPPP must include BMPs that
9 achieve pollutant discharge reductions attainable via BAT and BCT. 1997 Permit, Order
10 Section A(2); 2015 Permit, Section I(D) (Finding 32), Section X(C).

11 76. The SWPPP must include: a narrative description and summary of all
12 industrial activity, potential sources of pollutants, and potential pollutants; a site map
13 indicating the stormwater conveyance system, associated points of discharge, direction of
14 flow, areas of actual and potential pollutant contact, including the extent of pollution-
15 generating activities, nearby water bodies, and pollutants control measures; a description
16 of stormwater management practices; a description of the BMPs to be implemented to
17 reduce or prevent pollutants in stormwater discharges and authorized non-stormwater
18 discharges; the identification and elimination of non-stormwater discharges; the location
19 where significant materials are being shipped, stored, received, and handled, as well as
20 the typical quantities of such materials and the frequency with which they are handled; a
21 description of dust and particulate-generating activities; and a description of individuals
22 and their current responsibilities for developing and implementing the SWPPP. 1997
23 Permit, Section A(1)-(10); 2015 Permit, Section X.

24 77. The objectives of the SWPPP are to identify and evaluate sources of
25 pollutants associated with industrial activities that may affect the quality of stormwater
26 discharges, to identify and implement site-specific BMPs to prevent the exposure of
27 pollutants to stormwater, and to reduce or prevent the discharge of polluted stormwater
28 from industrial facilities. 1997 Permit, Section A(2); 2015 Permit, Section X.

1 78. The Storm Water Permit requires the discharger to evaluate the SWPPP on
2 an annual basis and revise it as necessary to ensure compliance with the Storm Water
3 Permit. 1997 Permit, Section A(9); 2015 Permit, Section X(A)(9). The Storm Water
4 Permit also requires that the discharger conduct an annual comprehensive site compliance
5 evaluation that includes a review of all visual observation records, inspection reports, and
6 sampling and analysis results, a visual inspection of all potential pollutant sources for
7 evidence of, or the potential for, pollutants entering the drainage system, a review and
8 evaluation of all BMPs to determine whether the BMPs are adequate, properly
9 implemented and maintained, or whether additional BMPs are needed, and a visual
10 inspection of equipment needed to implement the SWPPP. 1997 Permit, Sections
11 A(9)(a)-(c); 2015 Permit, Section XV.

12 79. Section A(9)(d) of the 1997 Permit requires that the discharger submit an
13 evaluation report that includes an identification of personnel performing the evaluation,
14 the date(s) of the evaluation(s), necessary SWPPP revisions, a schedule for implementing
15 SWPPP revisions, any incidents of non-compliance and the corrective actions taken, and
16 a certification that the discharger is in compliance with the Storm Water Permit. Storm
17 Water Permit, Section A(9)(d)(i)-(vi). If certification of compliance cannot be provided,
18 the discharger must explain in the evaluation report why the facility is not in compliance
19 with the Storm Water Permit. *Id.*, Section A(9)(d). The evaluation report shall be
20 submitted as part of the Annual Report specified in Section B(14) of the Storm Water
21 Permit. *Id.*

22 80. The SWPPP and site maps must be assessed annually and revised as
23 necessary to ensure accuracy and effectiveness. 1997 Permit, Sections A(1), B(3)-(4);
24 2015 Permit, Sections I(J) (Finding 55), X(B)(1). Significant SWPPP revisions must be
25 certified and submitted by the discharger via SMARTS within 30 days. 2015 Permit,
26 Section X(B)(2). Dischargers are required to submit revisions to the SWPPP that are
27 determined to not be significant every three (3) months in the reporting year. *Id.* at
28 Section X(B)(3); 2015 Permit, Fact Sheet, Section II (I)(1).

E. The Storm Water Permit's Monitoring and Reporting Requirements

81. The 1997 Permit required facility operators to develop and implement a monitoring and reporting plan ("M&RP") when industrial activities begin at a facility. 1997 Permit, Sections B(1)-(2) and E(3). The M&RP must have ensured that stormwater discharges are in compliance with the Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations specified in the 1997 Permit. *Id.* at Section B(2). The M&RP must have ensured that practices at the facility to prevent or reduce pollutants in stormwater and authorized non-stormwater discharges are evaluated and revised to meet changing conditions at the facility, including revision of the SWPPP. *Id.*

82. The objectives of the M&RP are to ensure that BMPs have been adequately developed and implemented, revised if necessary, and to ensure that stormwater and non-stormwater discharges are in compliance with the Storm Water Permit's Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations. 1997 Permit, Sections B(2)(a) and B(2)(b); 2015 Permit, Section XI.

83. The M&RP aids in the implementation and revision of the SWPPP and measures the effectiveness of BMPs to prevent or reduce pollutants in stormwater discharges. *Id.*, 1997 Permit Section B(2)(c) and B(2)(d).

84. The 2015 Permit requires facility operators to monitor and sample stormwater discharges to ensure that the facility is complying with the terms of the permit. 2015 Permit, Sections I(J) (Findings 55-56) and XI.

85. Section B(2)(d) of the 1997 Permit and Section XI(A)(4) of the 2015 Permit require that the M&RP shall be revised as necessary to ensure compliance with the Storm Water Permit.

86. Section B(4)(a) of the 1997 Permit and Section XI(A)(1) of the 2015 Permit require dischargers to conduct monthly visual observations of stormwater discharges.

87. Section B(4)(c) of the 1997 Permit and Section XI(A)(2) of the 2015 Permit requires dischargers to document the presence of any floating and suspended materials, O&G, discolorations, turbidity, or odor in the discharge, and the source of any pollutants

1 in stormwater discharges from the facility. Dischargers are required to maintain records
2 of observations, observation dates, discharge locations observed, and responses taken to
3 reduce or prevent pollutants from contacting stormwater discharges. *See* 1997 Permit,
4 Section B(4)(c); 2015 Permit, Section XI(A)(3). The Storm Water Permit also requires
5 dischargers to revise the SWPPP as necessary to ensure that BMPs are effectively
6 reducing and/or eliminating pollutants at the facility. 1997 Permit, Section B(4)(c); 2015
7 Permit, Section X(B)(1).

8 88. The Storm Water Permit requires dischargers to visually observe and collect
9 samples of stormwater discharges from all locations where stormwater is discharged.
10 1997 Permit, Sections B(5) and B(7); 2015 Permit Section XI(B)(4).

11 89. Section B(5)(a) of the 1997 Permit requires dischargers to collect
12 stormwater samples during the first hour of discharge from the first storm event of the
13 Wet Season and at least one other storm event in the Wet Season. All stormwater
14 discharge locations must be sampled. Facility operators that do not collect samples from
15 the first storm event of the Wet Season are still required to collect samples from two
16 other storm events of the Wet Season and must explain in the Annual Report why the first
17 storm event was not sampled.

18 90. Section B(5)(b) of the 1997 Permit requires that sampling conducted
19 pursuant to the Storm Water Permit occur during scheduled facility operating hours that
20 are preceded by at least three (3) working days without stormwater discharge.

21 91. Section B(5)(c)(i) of the 1997 Permit requires dischargers to analyze each
22 sample for pH, specific conductance ("SC"), TSS, and TOC. A discharger may substitute
23 analysis for O&G instead of TOC.

24 92. Section B(5)(c)(ii) of the 1997 Permit requires dischargers to analyze each
25 sample for toxic chemicals and other pollutants likely to be present in significant
26 quantities in the stormwater discharged from the facility.

27 93. Section B(5)(c)(iii) and Table D of the Storm Water Permit requires
28 facilities classified as Standard Industrial Classification ("SIC") code 3369 – Nonferrous

1 Foundries, Except Aluminum and Copper – such as the Fox Hills Facility, to analyze
 2 samples for zinc (“Zn”) and copper (“Cu”). The Permit requires facilities classified under
 3 SIC code 3321 – Iron and Steel Foundries – such as the Fox Hills Facility⁶, to analyze
 4 samples for iron (“Fe”), aluminum (“Al”), zinc (“Zn”) and copper (“Cu”). *See* 1997
 5 Permit at Table D; 2015 Permit, § VI(B) at Table 1.

6 94. Section B(14) of the 1997 Permit requires that dischargers submit an Annual
 7 Report to the applicable Regional Board by July 1 of each year. The Annual Report must
 8 include a summary of visual observations and sampling results, an evaluation of the
 9 visual observations and sampling and analysis results, laboratory reports, the annual
 10 comprehensive site compliance evaluation report specified in Section A(9), an
 11 explanation of why a facility did not implement any activities required, and the records
 12 specified in Section B(13)(i).

13 95. Section B(15)(f) of the 1997 Permit requires that sampling and analysis be
 14 performed according to Section B of the 1997 Permit.

15 96. Section XI(B)(1) of the 2015 Permit requires sampling if a precipitation
 16 event produces a discharge for at least one drainage area, and it is preceded by forty-eight
 17 (48) hours with no discharge from any drainage area (“Qualifying Storm Event” or
 18 “QSE”).

19 97. Section XI(B)(2) of the 2015 Permit requires dischargers to collect and
 20 analyze stormwater samples from two (2) QSEs within the first half of each reporting
 21 year (July 1 to December 31), and two (2) QSEs within the second half of each reporting
 22 year (January 1 to June 30).

23 98. Section XI(B)(5) of the 2015 Permit requires dischargers to sample each
 24 discharge location within four (4) hours of the start of the discharge, or the start of
 25 facility operations if the QSE occurs within the previous twelve (12) hour period.

26
 27 ⁶ The South Coast Air Quality Management District’s Facility Information Detail
 28 (“FIND”) electronic website lists the Fox Hills Facility ID as 19341 and the SIC code as
 3321 (Iron and Steel Foundries).

1 99. Section XI(B)(6) of the 2015 Permit requires dischargers to analyze
2 stormwater samples for TSS, O&G, pH, additional parameters identified by the
3 discharger on a facility-specific basis that serve as indicators of the presence of all
4 industrial pollutants identified in the pollutant source assessment, additional applicable
5 industrial parameters related to receiving waters with 303(d) listed impairments or
6 approved TMDLs, and additional parameters required by the Regional Water Board.

7 100. Table 1 of the 2015 Permit requires facilities under SIC code 3369, such as
8 the Fox Hills Facility, to analyze for zinc and copper; and facilities under SIC code 3321,
9 such as the Fox Hills Facility, to analyze for zinc, copper, iron, and aluminum.

10 101. Section XVI of the 2015 Permit requires dischargers to submit an annual
11 report with a Compliance Checklist that indicates whether a Discharger complies with,
12 and has addressed all applicable requirements of this General Permit, an explanation for
13 any non-compliance of requirements within the reporting year, as indicated in the
14 Compliance Checklist, an identification, including page numbers and/or Sections, of all
15 revisions made to the SWPPP within the reporting year, and the date(s) of the Annual
16 Evaluation.

17 **V. STATEMENT OF FACTS**

18 **A. The Facility Site Description**

19 102. Coastkeeper is informed and believes, and thereon alleges, that the Facility
20 (APN 14545205) is located in Huntington Beach, CA 92649 near the intersection of
21 Research Drive and Product Lane, specifically at the address of 5831 Research Drive,
22 Huntington Beach, CA 92649.

23 103. Coastkeeper is informed and believes, and thereon alleges, that The Facility
24 is a brass and bronze foundry that produces parts for water pumps. Onsite industrial
25 activities include off-loading of casting ingots and supplies, solids handling, preparation
26 of brass charges, brass and metal melting and pouring, production of sand molds and
27 cores, casting shakeout, cutoff operations, waste and recyclable metal dust management,
28 brass finishing and final product storage and shipping. Slag waste, refractory, and

1 baghouse sand and metal dust are pollutant byproducts of the processes. The Facility
2 operates multiple systems including a sand handling system (mixing foundry sand and
3 liquid phenolic resin to make molds for casting parts) as well as furnaces, baghouses,
4 core ovens vented to an afterburner and an abrasive blasting machine.

5 104. Coastkeeper is informed and believes, and thereon alleges, that the delivery
6 and pick up of raw and finished materials are made on a daily basis. Metallic
7 manufacturing often also includes powder metallurgy, metal mold casting, joining,
8 smelting, and other industrial requirements. Oil and other lubricants are key components
9 in these processes.

10 105. Coastkeeper is informed and believes, and thereon alleges, that the Facility
11 has two (2) manufacturing buildings which operate with open roll-up doors. The
12 buildings include foundry areas, core rooms, oven rooms, molding rooms, oil and
13 lubricant storage areas, full and empty drum storage areas, sand storage areas, areas for
14 management of waste and metal dust, shipping areas, parking lots, scrap metal bins, other
15 garbage bins/cans, coolant areas, boneyards or areas for broken manufacturing
16 machinery, propane, propylene, oxygen gas and diesel fuel storage and use areas, and
17 various heavy equipment employed for a variety of purposes.

18 106. Coastkeeper is informed and believes, and thereon alleges, that Information
19 available to Coastkeeper indicates that Fox Hills Casting Industries primary objective at
20 the Facility is the manufacture and sale of abrasion, corrosion, and heat-resistant iron and
21 brass castings, and completed brass and alloy charges and parts, accomplished through
22 brass and alloy melting, pouring and product finishing.

23 107. Coastkeeper is informed and believes, and thereon alleges, that Fox Hills
24 Casting Industries accomplishes its primary objective by maintaining areas primarily
25 dedicated to raw material storage, pouring, shakeout, grinding and finishing, welding, oil
26 and coolant storage, industrial chillers, office space, mold making and molding, sand
27 usage and storage, employee parking, chemical, diesel, and oil drums storage, and areas
28 for loading/unloading.

1 108. Coastkeeper is informed and believes, and thereon alleges, that pollutants
2 associated with operations at the Fox Hills Facility include, but are not limited to: pH-
3 affecting substances; metals, such as, iron and aluminum; toxic metals, such as cadmium,
4 arsenic, silver, mercury, lead, copper and zinc; TSS; volatile organic compounds such as
5 dichloroethylene and dichloroethane; petroleum hydrocarbons; gasoline and diesel fuels;
6 fuel additives; coolants; trash; specific conductance affecting substances; nitrate as
7 nitrogen, and O&G.

8 109. Coastkeeper is informed and believes, and thereon alleges, that the Fox Hills
9 Facility is classified as conforming to SIC code 3369 – Nonferrous Foundries, and SIC
10 code 3321 – Iron and Steel Foundries.

11 110. Coastkeeper is informed and believes, and thereon alleges, that Fox Hills
12 Casting Industries has not properly developed and/or implemented the required best
13 management practices (“BMPs”) to address pollutant sources and contaminated
14 discharges. BMPs are necessary at the Facility to prevent the exposure of pollutants to
15 precipitation and the subsequent discharge of polluted storm water from the Facility
16 during rain events. Consequently, during rain events storm water carries pollutants from
17 the Facility’s raw and finished material, oil, and chemical storage areas, parking areas,
18 fueling and maintenance areas, loading and unloading areas, garbage and refuse storage
19 areas, scrap metal areas, equipment washing areas, and other areas into the municipal
20 separate storm sewer system, which flows into the Receiving Waters, in violation of the
21 Storm Water Permit.

22 111. Coastkeeper is informed and believes, and thereon alleges that O&G,
23 ammonia, metal particulates, particulates of chemically polluted sand and dust have been
24 and continue to be tracked from the manufacturing buildings, raw material and refuse
25 storage areas, parking areas, and equipment maintenance and washing areas throughout
26 the Facility.

27 112. Coastkeeper is informed and believes, and thereon alleges that numerous
28 pollutants accumulate on the roofs of the Facility due to emissions from electric induction

1 furnaces and other heating and air discharge equipment, resulting in polluted storm water
2 discharges.

3 113. Coastkeeper is informed and believes, and thereon alleges that these
4 pollutants accumulate near parking, and loading and unloading areas, and the driveways
5 leading into the Facility.

6 114. Coastkeeper is informed and believes, and thereon alleges that trucks and
7 vehicles leaving the Facility via the driveways are pollutant sources tracking sediment,
8 dirt, O&G, ammonia and metal particles, and other pollutants off-site.

9 **B. The Fox Hills Facility's Storm Water Permit Coverage**

10 114. Coastkeeper is informed and believes, and thereon alleges, that the Owner
11 and/or Operator of the Fox Hills Facility submitted an NOI for coverage under the 1997
12 Permit.

13 115. Coastkeeper is not currently in possession of any SWPPP's submitted prior
14 to 2015, to cover the Fox Hills Facility, but Coastkeeper is informed and believes, and
15 thereon alleges, that the Owner and/or Operator of the Fox Hills Facility, submitted an
16 NOI for coverage under the 1997 Permit at or around the time of issuance of the 1997
17 Permit. Further information about coverage under the 1997 Permit will be sought in
18 discovery.

19 116. Coastkeeper is informed and believes, and thereon alleges, that the Owner
20 and/or Operator of the Fox Hills Facility submitted an NOI for their industrial operations
21 on or about February 17, 2015, for coverage for the Fox Hills Facility under the 2015
22 Permit.

23 117. The 2015 NOI lists the Fox Hills Facility operator as "Fox Hills" and the
24 Fox Hills Facility address as "5831 Research Dr. Huntington Beach CA 92649," the 2015
25 NOI lists the SIC code as "3369 – Nonferrous Foundries, Except Aluminum and Copper"
26 and the Receiving Water for discharges and runoff from the Facility as "Chica Channel."

27 118. The State Board's electronic database, called the Storm Water Multiple
28 Application & Report Tracking System ("SMARTS"), lists the current Fox Hills Facility

1 Waste Discharge Identification (“WDID”) number as 8 30I000689 and the Fox Hills
2 Facility’s coverage under the Storm Water Permit as “Active.”

3 119. Via search of the SMARTS database, Coastkeeper obtained a SWPPP for
4 the Fox Hills Facility dated June 2015 (“Fox Hills Facility SWPPP”).

5 120. Coastkeeper is informed and believes, and thereon alleges, that the Fox Hills
6 Facility SWPPP fails to describe and/or adequately describe all of the Facility’s industrial
7 activities or processes.

8 121. Coastkeeper is informed and believes, and thereon alleges, that because the
9 Fox Hills Facility’s SWPPP fails to describe and/or adequately describe all of the
10 Facility’s industrial activities, the Fox Hills Facility’s SWPPP also fails to describe
11 and/or adequately describe all of the significant materials and processes that are related to
12 the Facility’s industrial activities.

13 122. Coastkeeper is informed and believes, and thereon alleges, that pollutants
14 associated with the Fox Hills Facility include, but are not limited to: pH-affecting
15 substances; metals, such as iron and aluminum; toxic metals, such as lead, zinc,
16 cadmium, chromium, arsenic, silver, nickel, copper, and mercury; volatile organic
17 compounds; ammonia, chemical oxygen demand (“COD”); TSS; gasoline and diesel
18 fuels; fugitive metal particulates, and other dust and dirt; and O&G.

19 123. Coastkeeper is informed and believes, and thereon alleges, that without
20 properly identifying all industrial activities or all significant materials at the Fox Hills
21 Facility in the SWPPP, the Fox Hills Facility Owner and/or Operator has not developed
22 and/or implemented all appropriate BMPs.

23 124. Coastkeeper is informed and believes, and thereon alleges, that the Fox Hills
24 Facility’s SWPPP includes no assessments and/or no adequate assessments of potential
25 pollutant sources, the associated pollutants, and the corresponding BMPs at the Facility.

26 125. Coastkeeper is informed and believes, and thereon alleges, that the Fox Hills
27 Facility’s SWPPP includes no description and/or no adequate description of the Facility’s
28 BMPs, analyses of the effectiveness of the BMPs, or summaries of the BMPs by pollutant

1 source.

2 126. Coastkeeper is informed and believes, and thereon alleges, that the Fox Hills
3 Facility Owner and/or Operator has failed and continues to fail to develop the Facility's
4 SWPPP and site-specific BMPs consistent with Section A of the 1997 Permit, and
5 Section X of the 2015 Permit.

6 127. Coastkeeper is informed and believes, and thereon alleges, that Defendant's
7 SWPPP fails and continues to fail to include an adequate: (1) list of significant materials
8 handled and stored at the site; (2) description of potential pollutant sources including
9 industrial processes, material handling and stockpiling areas, dust and particulate
10 generating activities; (3) description of significant spills and leaks; or (4) list of all non-
11 stormwater discharges and their sources; Section A of the 1997 Permit and Section X of
12 the 2015 Permit.

13 **C. Industrial Activities, Pollutant Sources, Pollutants, and BMPs at the**
14 **Fox Hills Facility**

15 128. Coastkeeper is informed and believes, and thereon alleges, that the Fox Hills
16 Facility is an industrial manufacturing facility operating as a brass and bronze foundry
17 producing parts for water pumps employing over twenty-five people and operating over
18 50 hours per week.

19 129. Coastkeeper is informed and believes, and thereon alleges, that industrial
20 activities that occur at the Fox Hills Facility involve: raw material storage, pouring,
21 shakeout, grinding and finishing, welding, oil and coolant storage, industrial chillers,
22 office space, mold making and molding, employee parking, chemical, diesel, and oil
23 drums storage, and loading and unloading of materials and products. Much of this
24 activity results in metal particulates and other portions of scrap metal which requires
25 much additional containment and cleanup efforts. Efforts not undertaken, as alleged
26 herein, and as evidenced by local agency documentation in recent years.

27 130. Coastkeeper is informed and believes, and thereon alleges, that the Fox Hills
28 Facility Owner and/or Operator stores hazardous materials such as waste oil, gasoline,

1 diesel fuel, sand, baghouse dust, lubricating oils and grease, cleaning solvents and other
2 process chemicals, scrap metal, and antifreeze at the Facility.

3 131. Coastkeeper is informed and believes, and thereon alleges, that stormwater
4 sampling at the Fox Hills Facility demonstrate that the Facility's stormwater discharges
5 contain concentrations of pollutants above the Benchmark Levels, including but not
6 limited to aluminum, iron, zinc, nitrate plus nitrite as nitrogen, and TSS.

7 132. Coastkeeper is informed and believes, and thereon alleges, that the repeated
8 and significant exceedances of Benchmark Levels demonstrate that the Fox Hills Facility
9 Owner and/or Operator has failed and continues to fail to develop and/or implement
10 BMPs to prevent the exposure of pollutants to stormwater and to prevent discharges of
11 polluted stormwater and non-stormwater from the Facility.

12 133. Coastkeeper is informed and believes, and thereon alleges, that the Fox Hills
13 Facility Owner and/or Operator has failed and continues to fail to adequately revise the
14 SWPPP, despite repeated and significant concentrations of pollutants in the Fox Hills
15 Facility's stormwater discharges, make changes to the Facility's training programs, or
16 make any other changes based upon events that would signal a need for required
17 revisions or alteration of practices.

18 134. Coastkeeper is informed and believes, and thereon alleges, that some of the
19 Fox Hills Facility's industrial operations are conducted outdoors without secondary
20 containment or other measures to prevent polluted stormwater from discharging from the
21 Facility.

22 135. Coastkeeper is informed and believes, and thereon alleges, that pollutants,
23 including but not limited to those referenced herein, have been and continue to be tracked
24 throughout the Fox Hills Facility's operation areas and offsite.

25 136. Coastkeeper is informed and believes, and thereon alleges, that these
26 pollutants are deposited into water bodies, and onto streets and/or into storm drains near
27 to the Fox Hills Facility via fugitive dust and other means, including but not limited to
28 dust generated by wind, equipment and vehicles.

1 137. Coastkeeper is informed and believes, and thereon alleges, that trucks and
2 vehicles leaving the Fox Hills Facility via staging areas and driveways are pollutant
3 sources tracking sediment, dirt, oil and grease, metal particulates, polluted sand, and
4 other pollutants off-site.

5 138. Coastkeeper is informed and believes, and thereon alleges, that the Fox Hills
6 Facility Owner's and/or Operator's failure to properly address pollutant sources and
7 pollutants results in the exposure of pollutants associated with their industrial activities to
8 precipitation, and that this results in discharges of polluted stormwater from the Facility
9 and into local waterways in violation of the Storm Water Permit and/or the Clean Water
10 Act.

11 139. Coastkeeper is informed and believes, and thereon alleges, that BAT/BCT
12 for the Fox Hills Facility is full enclosure of all uncovered bulk material stockpiles,
13 finished product, and industrial operations that cause the spread and release of pollutants,
14 and cleanup of any waste materials, and unused, broken, or legacy equipment at the
15 Facility.

16 140. Coastkeeper is informed and believes, and thereon alleges, that Defendant
17 has failed to achieve compliance with BAT/BCT requirements by failing to fully enclose
18 bulk material stockpiles, finished product, waste materials, industrial operations that
19 cause the spread and release of pollutants, and unused, broken or legacy equipment.

20 141. Coastkeeper is informed and believes, and thereon alleges, that Defendant's
21 industrial activities cause polluted exhaust and particulates to be discharged through
22 vents and exhaust systems, and upon information and belief, some of which eventually
23 settles into polluted dirt, grime, and dust on the roof surfaces.

24 142. Coastkeeper is informed and believes, and thereon alleges, that the Fox Hills
25 Facility Owner's and/or Operator's failure to properly address these pollutants and their
26 sources results in the exposure of pollutants to precipitation, which carries these
27 pollutants with stormwater flows from the Facility into Bolsa Chica Channel to
28 Huntington Harbor to Anaheim Bay – Seal Beach National Wildlife Refuge.

1 143. Coastkeeper is informed and believes, and thereon alleges, that Defendant's
2 failure to properly address these pollutants and their sources results in the discharge of
3 fugitive dust, baghouse dust, including but not limited to dust generated by industrial
4 operations, emissions, exhaust, wind, equipment, and vehicles, which carries these
5 pollutants to off-site waterbodies, and to off-site properties, streets and storm drains
6 adjacent to the Fox Hills Facility. Pollutants deposited off-site eventually flow into Bolsa
7 Chica Channel, Sunset Bay – Huntington Harbor, and Anaheim Bay – Seal Beach
8 National Wildlife Refuge.

9 **D. Stormwater Discharge Locations at the Fox Hills Facility**

10 144. The Fox Hills Facility Owner and/or Operator reports that there are two (2)
11 discharge points at the Fox Hills Facility, which accept stormwater flowing in various
12 directions from onsite industrial areas and discharge stormwater offsite: the first
13 discharge point (“Discharge Point #1”) located to the south, in the center of the Facility,
14 between the two manufacturing buildings at the front gate, prior to entering parking
15 areas, and appears to flow out of a driveway onto Research Drive. The second discharge
16 point (“Discharge Point #2”) is located near the northwest corner of the Facility, at the
17 rear gate and driveway, with storm water flowing onto Product Lane. Discharge Point #1
18 accepts much of the stormwater flow from behind and between the manufacturing
19 buildings which flows past industrial chilling areas, a welding area, various gas storage,
20 and metal dust and debris storage, and then travels through the main driveway, exiting the
21 Facility site; Discharge Point #2 accepts stormwater flow from behind the manufacturing
22 buildings, and then flows past a series of outside storage areas and exits out the driveway
23 at the rear gate.

24 145. Coastkeeper is informed and believes, and thereon alleges, that a third
25 discharge point exists near the southwest corner of the Fox Hills Facility where another
26 driveway allows access to a Facility parking area, discharging stormwater originating at
27 the Facility out to Product Lane. This third discharge point is alleged to take stormwater
28 overflow from the Discharge Point #1 and from the western side of the parking area.

1 146. The Fox Hills Facility SWPPP does not identify down spouts from the
2 roofed areas of the manufacturing buildings; it is unknown which discharge points handle
3 storm water runoff originating from roofed areas, where exhaust carrying various
4 pollutants is discharged through vents and exhaust systems, and upon information and
5 belief, settles and accumulates as polluted dirt, grime, and dust on the roof surfaces.

6 **E. The Fox Hills Facility's Stormwater Discharges to the Receiving Waters**
7 **Contain Elevated Levels of Pollutants**

8 147. Coastkeeper is informed and believes, and thereon alleges, that pollutants
9 from the Fox Hills Facility discharge from at least three discharge points to the Orange
10 County municipal storm sewer system into Bolsa Chica Channel, which flows into Sunset
11 Bay – Huntington Harbor, and Anaheim Bay – Seal Beach National Wildlife Refuge
12 (collectively the “Receiving Waters”).

13 148. The EPA promulgated regulations for the Section 402 NPDES permit
14 program defining waters of the United States. *See* 40 C.F.R. § 122.2. The EPA interprets
15 waters of the United States to include not only traditionally navigable waters but also
16 other waters, including waters tributary to navigable waters, wetlands adjacent to
17 navigable waters, and other waters including intermittent streams that could affect
18 interstate commerce. The CWA requires any person who discharges or proposes to
19 discharge pollutants into waters of the United States to submit an NPDES permit
20 application. 40 C.F.R. § 122.21.

21 149. Coastkeeper is informed and believes, and thereon alleges, that each of the
22 Receiving Waters is a water of the United States, and/or a tributary to a traditionally
23 navigable water.

24 150. Coastkeeper is informed and believes, and thereon alleges, that polluted
25 stormwater and non-stormwater discharges from the Fox Hills Facility to the Receiving
26 Waters.

27 151. Stormwater discharges containing pollutants, including but not limited to,
28 heavy metals such as copper, zinc, aluminum, and iron adversely affect the aquatic

1 environment.

2 152. Samples of stormwater discharges collected at the Fox Hills Facility contain
3 pollutants including copper, zinc, lead, iron, aluminum, TSS, N+N, and pH affecting
4 substances in excess of levels known to adversely impact aquatic species and the
5 environment, federal regulations, WQS, EPA Benchmarks, and the CTR in violation of
6 the Storm Water Permit's Effluent Limitations and Receiving Water Limitations.

7 153. Coastkeeper is informed and believes, and based upon Annual Reports and
8 Monitoring Reports obtained from the Regional Board following service of the Notice
9 Letter herein, that the Fox Hills Facility reported multiple effluent exceedances from the
10 2012-2013, 2013-2014, 2014-2015, 2015-2016, and 2016-2017 reporting years, including
11 but not limited to, exceedances of TSS, Cu, Al, Fe, pH, N+N and Zn.

12 154. Coastkeeper is informed and believes, and thereon alleges, that during
13 and/or after every significant rain event⁷ or any other stormwater or non-stormwater
14 discharge that has occurred at the Fox Hills Facility since December 13, 2011 through the
15 present, Defendant has discharged and continues to discharge stormwater and non-
16 stormwater from the Fox Hills Facility that contains concentrations of pollutants at levels
17 that violate the prohibitions and limitations set forth in the Storm Water Permit, the
18 Federal Effluent Limitations, the EPA Benchmarks, CTR, and the WQS.

19 **F. The Fox Hills Facility's Non-Storm Water Discharges**

20 143. Coastkeeper is informed and believes, and thereon alleges, that water is used
21 heavily in the industrial operations occurring at the Fox Hills Facility, including but not
22 limited to manufacturing processes, cooling processes, and/or when equipment is or other
23 materials are subject to cleaning activities at the Facility.

24 144. Coastkeeper is informed and believes, and thereon alleges, that non-storm
25 water discharges resulting from these and other industrial activities at the Fox Hills
26 Facility are not included on the list of authorized non-storm water discharges in Special

27
28 ⁷ A significant rain event is an event that produces stormwater runoff, which according to
EPA occurs with more than 0.1 inches of precipitation.

1 Conditions D(1) of the 1997 Permit.

2 145. Coastkeeper is informed and believes, and thereon alleges, that Defendant
3 collects and stores numerous pollutants at the Fox Hills Facility including baghouse dust,
4 grind sludge, waste oil and non-waste oil, a wide variety of process chemicals and
5 coolants, solvents, and sand and sandblast grit, among others.

6 146. Coastkeeper is informed and believes, and thereon alleges, that Defendant
7 handles and transports these substances and materials, and other bulk materials, around
8 and throughout the Fox Hills Facility, manually, and via uncovered transport systems and
9 vehicles, including but not limited to, fork lifts, feeders, and trucks.

10 147. Coastkeeper is informed and believes, and thereon alleges, that Defendant's
11 handling and transport of these and other materials, generates polluted fugitive dust.

12 148. Coastkeeper is informed and believes, and thereon alleges, that large
13 compressors, coolant machinery and towers, and other machinery, causing leakage, heavy
14 condensation and runoff are in operation throughout operating hours at the Fox Hills
15 Facility.

16 149. Coastkeeper is informed and believes, and thereon alleges, that Defendant's
17 operation of large compressors, coolant machinery and towers, and other machinery,
18 causing leakage, heavy condensation and runoff, creates pools of chemical and oil water,
19 and picks up fugitive dust in the process of discharging from the Fox Hills Facility.

20 150. Coastkeeper is informed and believes, and thereon alleges, that fugitive dust
21 and sand from the Fox Hills Facility, generated by the manufacturing process and other
22 activities, and spread via exhaust, wind, vehicles, and equipment, is deposited into the
23 storm sewer system during dry weather.

24 151. Coastkeeper is informed and believes, and thereon alleges, that the Fox Hills
25 Facility Owner and/or Operator has not obtained a separate NPDES permit for non-storm
26 water discharges resulting from the activities alleged herein.

27 152. Coastkeeper is informed and believes, and thereon alleges, that BMPs have
28 not been developed and/or implemented to prevent non-storm water from discharging

1 from the Fox Hills Facility.

2 153. Coastkeeper is informed and believes, and thereon alleges, that unauthorized
3 non-storm water discharges from the Fox Hills Facility to the Receiving Waters occur
4 when the Fox Hills Facility Owner and/or Operator fails to prevent polluted water and
5 fugitive dust from discharging from the Facility from the activities described herein.

6 154. Polluted storm water and non-storm water discharges from industrial
7 facilities like the Fox Hills Facility contribute to the impairment of surface waters.

8 **G. Defendant's Sampling, Reporting, and Monitoring**

9 155. Coastkeeper is informed and believes, and thereon alleges, that Defendant
10 failed and continues to fail to develop an adequate M&RP for industrial operations at the
11 Fox Hills Facility that complies with Section B of the 1997 Permit, and Section XI of the
12 2105 Permit.

13 156. Coastkeeper is informed and believes, and thereon alleges, that Defendant
14 failed and continues to fail to revise the M&RP for the Fox Hills Facility as necessary to
15 ensure compliance with the Storm Water Permit, in violation of Section B(2)(d), and
16 Section XI of the 2105 Permit.

17 157. Coastkeeper is informed and believes, and thereon alleges, that Defendant
18 has failed and continues to fail to collect samples during the first hour of the first storm
19 event of the Wet Season over the past five years, in violation of Section B(5)(a) of the
20 1997 Permit and Section XI(B) of the 2015 Permit.

21 158. Coastkeeper is informed and believes, and thereon alleges, that Defendant
22 failed and continues to fail to analyze stormwater samples collected at the Fox Hills
23 Facility for all toxic chemicals and other pollutants likely to be present in significant
24 quantities in the stormwater discharges, in violation of Section B(5) of the 1997 Permit
25 and Section XI(B) of the 2015 Permit.

26 159. Coastkeeper is informed and believes, and thereon alleges, that Defendant
27 has failed and continues to fail to demonstrate that stormwater sampling limited to those
28 listed in the Fox Hills Facility's SWPPP, are representative of pollutants from the

1 Facility, in violation of Section B(5) of the 1997 Permit and Section XI(B) of the 2015
2 Permit.

3 160. Coastkeeper is informed and believes, and thereon alleges, that Defendant
4 has failed and continues to fail to sample stormwater discharges from all discharge
5 locations, in violation of Section B(7) of the 1997 Permit and Sections XI(B) and XI(C)
6 of the 2015 Permit.

7 161. Coastkeeper is informed and believes, and thereon alleges, that Defendant
8 failed and continues to fail to adequately revise the M&RP for the Fox Hills Facility as
9 necessary to ensure compliance with the Storm Water Permit in violation of Sections
10 A(9) and A(10) of 1997 Permit and Sections XI(B) and XI(C) of the 2015 Permit.

11 162. Coastkeeper is informed and believes, and thereon alleges, that the Owner
12 and/or Operator of the Fox Hills Facility consistently fail to perform visual observations
13 of stormwater during QSEs.

14 163. Coastkeeper is informed and believes, and thereon alleges, that the Owner
15 and/or Operator of the Fox Hills Facility has consistently failed and continues to fail to
16 report any noncompliance with the Storm Water Permit at the time that the Annual
17 Report is submitted, including: 1) a description of the noncompliance and its cause, 2) the
18 period of noncompliance, 3) if the noncompliance has not been corrected, the anticipated
19 time it is expected to continue, and 4) steps taken or planned to reduce and prevent
20 recurrence of the noncompliance as required by the 1997 Permit, Section C(11)(d).

21 164. Coastkeeper is informed and believes, and thereon alleges, that the Owner
22 and/or Operator of the Fox Hills Facility has consistently failed and continues to fail to
23 report any noncompliance with the Storm Water Permit at the time that the Annual
24 Report is submitted, including: 1) a Compliance Checklist that indicates whether a
25 Discharger complies with, and has addressed all applicable requirements of this General
26 Permit, 2) an explanation for any non-compliance of requirements within the reporting
27 year, as indicated in the Compliance Checklist, 3) an identification, including page
28 numbers and/or sections, of all revisions made to the SWPPP within the reporting year,

1 and 4) the date(s) of the Annual Evaluation as required by Section XVI of the 2015
2 Permit.

3 165. Coastkeeper is informed and believes, and thereon alleges, that Defendant's
4 certifications of compliance with the Storm Water Permit in each of its past five (5)
5 Annual Reports, provided the Annual Reports were in fact submitted, were erroneous
6 because Defendant has not developed and/or implemented the required BMPs, or revised
7 the SWPPP or the M&RP, as required by Sections A and B of the 1997 Permit and
8 Sections X and XI of the 2015 Permit.

9 166. Coastkeeper is informed and believes, and thereon alleges, that Defendant
10 has failed to submit complete Annual Reports to the Regional Board in violation of
11 Section B(14) of the 1997 Permit and Section XVI of the 2015 Permit.

12 **VI. CLAIMS FOR RELIEF**

13 **FIRST CAUSE OF ACTION**

14 **Discharges of Contaminated Stormwater in Violation of**
15 **the Storm Water Permit's Effluent Limitations and the Clean Water Act.**
16 **33 U.S.C. §§ 1311(a), 1342, 1365(a) and 1365(f)**

17 167. Coastkeeper incorporates the allegations contained in the above paragraphs
18 as though fully set forth herein.

19 168. Coastkeeper is informed and believes, and thereon alleges, that Defendant
20 failed and continues to fail to reduce or prevent pollutants associated with industrial
21 activities at the Fox Hills Facility from stormwater discharges from the Facility through
22 implementation of BMPs that achieve BAT/BCT.

23 169. Coastkeeper is informed and believes, and thereon alleges, that discharges of
24 stormwater containing levels of pollutants that do not achieve compliance with
25 BAT/BCT standards from the Fox Hills Facility occur every time stormwater discharges
26 from the Facility. Defendant's failure to develop and/or implement BMPs that achieve
27 the pollutant discharge reductions attainable via BAT or BCT at the Facility is a violation
28 of the Storm Water Permit and the CWA. *See* 1997 Permit, Effluent Limitation B(3);
2015 Permit, Section I(D) (Finding 32), Effluent Limitation V(A); 33 U.S.C. § 1311(b).

1 170. Defendant violates and will continue to violate the Storm Water Permit's
2 Effluent Limitations each and every time stormwater containing levels of pollutants that
3 do not achieve BAT/BCT standards discharges from the Fox Hills Facility.

4 171. Coastkeeper is informed and believes, and thereon alleges, that Defendant's
5 violations of Effluent Limitations of the Storm Water Permit and the Clean Water Act are
6 ongoing and continuous.

7 172. Each day since at least December 13, 2011 that the Fox Hills Facility Owner
8 and/or Operator discharges stormwater containing pollutants in violation of the Storm
9 Water Permit is a separate and distinct violation of Section 301(a) of the CWA, 33 U.S.C.
10 § 1311(a).

11 173. By committing the acts and omissions alleged above, the Defendant is
12 subject to an assessment of civil penalties for each and every violation of the CWA
13 occurring from December 13, 2011 to the present, pursuant to Sections 309(d) and 505 of
14 the CWA, 33 U.S.C. §§ 1319(d), 1365, and 40 C.F.R. § 19.4.

15 174. An action for injunctive relief is authorized by CWA Section 505(a), 33
16 U.S.C. § 1365(a). Continuing commission of the acts and omissions alleged above would
17 irreparably harm Plaintiff and the citizens of the State of California, for which harm
18 Coastkeeper has no plain, speedy, or adequate remedy at law.

19 175. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a) because
20 an actual controversy exists as to the rights and other legal relations of the Parties.

21 WHEREFORE, Plaintiff prays for judgment against Defendant as set forth
22 hereafter.

23 **SECOND CAUSE OF ACTION**

24 **Defendant's Discharges of Contaminated Stormwater in Violation of**
25 **the Storm Water Permit's Receiving Water Limitations and the Clean Water Act.**
26 **33 U.S.C. §§ 1311(a), 1342, 1365(a) and 1365(f)**

27 176. Coastkeeper incorporates the allegations contained in the above paragraphs
28 as though fully set forth herein.

177. Coastkeeper is informed and believes, and thereon alleges, that discharges of

1 stormwater containing levels of pollutants that adversely impact human health and/or the
2 environment from the Fox Hills Facility occur each time stormwater discharges from the
3 Facility.

4 178. Coastkeeper is informed and believes, and thereon alleges, that stormwater
5 containing levels of pollutants that cause or contribute to exceedances of water quality
6 standards has discharged and continues to discharge from the Fox Hills Facility each time
7 stormwater discharges from the Facility.

8 179. The Fox Hills Facility Owner and/or Operator violates and will continue to
9 violate the Storm Water Permit's Receiving Water Limitations each and every time
10 stormwater containing levels of pollutants that adversely impact human health and/or the
11 environment, and that cause or contribute to exceedances of WQS, discharges from the
12 Fox Hills Facility.

13 180. Coastkeeper is informed and believes, and thereon alleges, that the Fox Hills
14 Facility Owner's and/or Operator's violations of Receiving Water Limitations of the
15 Storm Water Permit and the CWA are ongoing and continuous.

16 181. Each and every violation of the Storm Water Permits' Receiving Water
17 Limitations is a separate and distinct violation of Section 301(a) of the CWA, 33 U.S.C. §
18 1311(a).

19 182. By committing the acts and omissions alleged above, the Fox Hills Facility
20 Owner and/or Operator is subject to an assessment of civil penalties for each and every
21 violation of the CWA occurring from December 13, 2011 to the present, pursuant to
22 Sections 309(d) and 505 of the CWA, 33 U.S.C. §§ 1319(d), 1365, and 40 C.F.R. § 19.4.

23 183. An action for injunctive relief under the Clean Water Act is authorized by
24 Section 505(a), 33 U.S.C. § 1365(a). Continuing commission of the acts and omissions
25 alleged above would irreparably harm Plaintiff, its members, and the citizens of the State
26 of California, for which harm they have no plain, speedy, or adequate remedy at law.

27 184. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a) because
28 an actual controversy exists as to the rights and other legal relations of the Parties.

1 WHEREFORE, Plaintiff prays for judgment against Defendant as set forth
2 hereafter.

3 **THIRD CAUSE OF ACTION**

4 **Defendant's Discharges of Non-Stormwater in Violation**
5 **of the Storm Water Permit and the Clean Water Act.**
6 **33 U.S.C. §§ 1311(a), 1342, 1365(a) and 1365(f)**

7 185. Coastkeeper incorporates the allegations contained in the above paragraphs
8 as though fully set forth herein.

9 186. Coastkeeper is informed and believes, and thereon alleges, that prohibited
10 non-stormwater discharges have discharged and continue to discharge from the Facilities,
11 in violation of the Storm Water Permit and/or CWA Section 301(a), 33 U.S.C. § 1311(a).

12 187. Coastkeeper is informed and believes, and thereon alleges, that the Fox Hills
13 Facility Owner's and/or Operator's violations of Discharge Prohibitions of the Storm
14 Water Permit are ongoing and continuous.

15 188. Each and every violation of the Storm Water Permit's Discharge
16 Prohibitions is a separate and distinct violation of Section 301(a) of the CWA, 33 U.S.C.
17 § 1311(a).

18 189. By committing the acts and omissions alleged above, the Defendants and the
19 Fox Hills Facility Owner and/or Operator is subject to an assessment of civil penalties for
20 each and every violation of the CWA occurring from December 13, 2011 to the present,
21 pursuant to Sections 309(d) and 505 of the CWA, 33 U.S.C. §§ 1319(d), 1365, and 40
22 C.F.R. § 19.4.

23 190. An action for injunctive relief under the CWA is authorized by 33 U.S.C. §
24 1365(a). Continuing commission of the acts and omissions alleged above would
25 irreparably harm Plaintiff, its members, and the citizens of the State of California, for
26 which harm they have no plain, speedy, or adequate remedy at law.

27 191. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a) because
28 an actual controversy exists as to the rights and other legal relations of the Parties.

WHEREFORE, Plaintiff prays for judgment against Defendant as set forth

hereafter.

FOURTH CAUSE OF ACTION

**Defendant's Failure to Adequately Develop, Implement, and/or
Revise a Storm Water Pollutant Prevention Plan in Violation of the
Storm Water Permit and the Clean Water Act.
33 U.S.C. §§ 1311(a), 1342, 1365(a) and 1365(f)**

192. Coastkeeper incorporates the allegations contained in the above paragraphs as though fully set forth herein.

193. Coastkeeper is informed and believes, and thereon alleges, that the Fox Hills Facility Owner and/or Operator has failed and continues to fail to develop an adequate SWPPP for the Fox Hills Facility, in violation of the Storm Water Permit.

194. Coastkeeper is informed and believes, and thereon alleges, that the Fox Hills Facility Owner and/or Operator has failed and continues to fail to adequately implement a SWPPP for the Fox Hills Facility, in violation of the Storm Water Permit.

195. Coastkeeper is informed and believes, and thereon alleges, that the Fox Hills Facility Owner and/or Operator has failed and continues to fail to adequately revise the SWPPP for the Fox Hills Facility, in violation of the Storm Water Permit.

196. The Fox Hills Facility Owner and/or Operator has been in violation of the Storm Water Permit at the Fox Hills Facility every day from December 13, 2011 to the present.

197. The Fox Hills Facility Owner's and/or Operators' violations of the Storm Water Permit and the CWA at the Fox Hills Facility are ongoing and continuous.

198. The Fox Hills Facility Owner and/or Operator will continue to be in violation of the Storm Water Permit and the CWA each and every day Fox Hills Facility Owner and/or Operator fails to adequately develop, implement, and/or revise the SWPPP for the Fox Hills Facility.

199. Each and every violation of the Storm Water Permit's SWPPP requirements at the Fox Hills Facility is a separate and distinct violation of the CWA.

200. By committing the acts and omissions alleged above, the Fox Hills Facility

1 Owner and/or Operator is subject to an assessment of civil penalties for each and every
2 violation of the CWA occurring from December 13, 2011 to the present, pursuant to
3 Sections 309(d) and 505 of the CWA, 33 U.S.C. §§ 1319(d), 1365, and 40 C.F.R. § 19.4.

4 201. An action for injunctive relief under the CWA is authorized by Section
5 505(a) of the CWA. 33 U.S.C. § 1365(a). Continuing commission of the acts and
6 omissions alleged above would irreparably harm Coastkeeper, its members, and the
7 citizens of the State of California, for which harm they have no plain, speedy, or adequate
8 remedy at law.

9 202. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a) because
10 an actual controversy exists as to the rights and other legal relations of the Parties.

11 WHEREFORE, Plaintiff prays for judgment against Defendant as set forth
12 hereafter.

13 **FIFTH CAUSE OF ACTION**

14 **Defendant's Failure to Adequately Develop, Implement, and/or**
15 **Revise a Monitoring and Reporting Plan in Violation of**
16 **the Storm Water Permit and the Clean Water Act.**

17 **U.S.C. §§ 1311(a), 1342, 1365(a) and 1365(f)**

18 203. Coastkeeper incorporates the allegations contained in the above paragraphs
19 as though fully set forth herein.

20 204. Coastkeeper is informed and believes, and thereon alleges, that the Fox Hills
21 Facility Owner and/or Operator has failed and continues to fail to develop an adequate
22 M&RP for the Fox Hills Facility, in violation of the Storm Water Permit.

23 205. Coastkeeper is informed and believes, and thereon alleges, that the Fox Hills
24 Facility Owner and/or Operator has failed and continues to fail to adequately implement
25 an M&RP for the Fox Hills Facility, in violation of the Storm Water Permit.

26 206. Coastkeeper is informed and believes, and thereon alleges, that the Fox Hills
27 Facility Owner and/or Operators has failed and continues to fail to adequately revise an
28 M&RP for the Fox Hills Facility, in violation of the Storm Water Permit.

207. The Fox Hills Facility Owner and/or Operator has been in violation of the

1 Storm Water Permit's monitoring requirements at the Fox Hills Facility every day from
2 December 13, 2011 to the present.

3 208. The Fox Hills Facility Owner's and/or Operator's violations of their Storm
4 Water Permit's monitoring requirements and the CWA at the Fox Hills Facility are
5 ongoing and continuous.

6 209. The Fox Hills Facility Owner and/or Operator will continue to be in
7 violation of Section B and Provision E(3) the 1997 Permit, Section XI of the 2015
8 Permit, and the CWA each and every day they fail to adequately develop, implement,
9 and/or revise an M&RP for the Fox Hills Facility.

10 210. Each and every violation of the Storm Water Permit's M&RP requirements
11 at the Fox Hills Facility is a separate and distinct violation of the CWA.

12 211. By committing the acts and omissions alleged above, the Fox Hills Facility
13 Owner and/or Operator is subject to an assessment of civil penalties for each and every
14 violation of the CWA occurring from December 13, 2011 to the present, pursuant to
15 Sections 309(d) and 505 of the CWA, 33 U.S.C. §§ 1319(d), 1365, and 40 C.F.R. § 19.4.

16 212. An action for injunctive relief under the CWA is authorized by Section
17 505(a) of the CWA, 33 U.S.C. § 1365(a). Continuing commission of the acts and
18 omissions alleged above would irreparably harm Coastkeeper, its members, and the
19 citizens of the State of California, for which harm they have no plain, speedy, or adequate
20 remedy at law.

21 213. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a) because
22 an actual controversy exists as to the rights and other legal relations of the Parties.

23 WHEREFORE, Plaintiff prays for judgment against Defendant as set forth
24 hereafter.

SIXTH CAUSE OF ACTION

Defendant's Failure to Report as Required by the Storm Water Permit in Violation of the Storm Water Permit and the Clean Water Act.

33 U.S.C. §§ 1311(a), 1342, 1365(a) and 1365(f)

214. Plaintiff incorporates the allegations contained in the above paragraphs as though fully set forth herein.

215. Receiving Water Limitation C(3) of the 1997 Permit requires a discharger to prepare and submit a report to the Regional Board describing changes it will make to current BMPs in order to prevent or reduce any pollutant in stormwater discharges that is causing or contributing to an exceedance of water quality standards. Once approved by the Regional Board, those BMPs must be implemented into a Facility's SWPPP.

216. Receiving Water Limitation C(4)(a) of the 1997 Permit requires the report to be submitted to the Regional Board no later than 60-days from the date the discharger first learns its discharge is causing or contributing to an exceedance of an applicable water quality standard. Section C(11)(d) of the Permit's Standard Provisions also requires dischargers to report any noncompliance.

217. Section XII(C) of the 2015 Permit requires a discharger to execute a Level 1 Exceedance Response Actions ("ERA") Evaluation and prepare a Level 1 ERA Report should they exceed a Numeric Action Level ("NAL") for any required sampling and analysis parameter under the 2015 Permit. The ERA Evaluation should identify additional BMPs and SWPPP revisions needed to prevent future NAL exceedances and comply with the 2015 Permit. Based upon the Level 1 ERA Evaluation, the discharger shall as soon as practicable, but not later than January 1, shall submit an ERA Report and certify that the Level 1 ERA Report includes: 1) a summary of the ERA Evaluation, 2) a detailed description of the SWPPP revisions and any additional BMPs for each parameter that exceeded a NAL.

218. Coastkeeper is informed and believes, and thereon alleges, that the Fox Hills Facility Owner and/or Operator has failed and continues to fail to submit accurate Annual

1 Reports to the Regional Board, in violation of Sections B(14), C(9), and C(10) of the
2 1997 Permit and Sections XI and XVI of the 2015 Permit.

3 219. Coastkeeper is informed and believes, and thereon alleges, that the Fox Hills
4 Facility Owner and/or Operator has failed and continues to fail to submit an accurate or
5 complete Level 1 ERA Report to the Regional Board, in violation of Section XII(C) of
6 the 2015 Permit.

7 220. Coastkeeper is informed and believes, and thereon alleges, that the Fox Hills
8 Facility Owner's and/or Operator's Annual Reports for the Fox Hills Facility failed and
9 continues to fail to meet the monitoring and reporting requirements of the Storm Water
10 Permit, in violation of Section B(14) of the 1997 Permit, and Sections XI and XVI of the
11 2015 Permit.

12 221. Coastkeeper is informed and believes, and thereon alleges, that the Fox Hills
13 Facility Owner and/or Operator has failed and continues to fail to submit complete
14 Annual Reports for the Fox Hills Facility to the Regional Board, in violation of Sections
15 B(14), C(9), C(10) and C(11) of the 1997 Permit, and Sections XI and XVI of the 2015
16 Permit.

17 222. The Fox Hills Facility Owner and/or Operator has been in violation of
18 Sections B(14), C(9), C(10), and/or C(11) of the 1997 Permit and CWA every day since
19 at least December 13, 2011, and Sections XI, XII and XVI of the 2015 Permit since July
20 1, 2015.

21 223. The Fox Hills Facility Owner and/or Operator has been in violation of the
22 reporting requirements of the Storm Water Permit each day it has operated the Fox Hills
23 Facility without reporting as required by Receiving Water Limitations C(3) and C(4) of
24 the 1997 Permit, and Sections XI, XII(C) and XVI of the 2015 Permit.

25 224. The Owner and/or Operator has been in violation of Receiving Water
26 Limitations C(3) and C(4) of the 1997 Permit every day since at least December 13,
27 2011, and in violation of Sections XI, XII and XVI of the 2015 Permit since July 1, 2015.
28

1 225. The Fox Hills Facility Owner's and/or Operator's violations of the reporting
2 requirements of the Storm Water Permit and the CWA are ongoing and continuous.

3 226. By committing the acts and omissions alleged above, the Fox Hills Facility
4 Owner and/or Operator is subject to an assessment of civil penalties for each and every
5 violation of the CWA occurring from December 13, 2011 to the present, pursuant to
6 Sections 309(d) and 505 of the CWA, 33 U.S.C. §§ 1319(d), 1365, and 40 C.F.R. § 19.4.

7 227. An action for injunctive relief under the CWA is authorized by Section
8 505(a) of the CWA. 33 U.S.C. § 1365(a). Continuing commission of the acts and
9 omissions alleged above would irreparably harm Coastkeeper, its members, and the
10 citizens of the State of California, for which harm they have no plain, speedy, or adequate
11 remedy at law.

12 228. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a) because
13 an actual controversy exists as to the rights and other legal relations of the Parties.

14 WHEREFORE, Plaintiff prays for judgment against Defendant as set forth
15 hereafter.

16 **SEVENTH CAUSE OF ACTION**

17 **Defendants' Discharges of Pollutants without an NPDES Permit.**
18 **and Clean Water Act.**

19 **33 U.S.C. §§ 1311(a), 1342, 1365(a) and 1365(f)**

20 229. Plaintiff incorporates the allegations contained in the above paragraphs as
21 though fully set forth herein.

22 230. Coastkeeper is informed and believes, and thereon alleges, that storm water
23 associated with industrial activities discharges from the Fox Hills Facility without Storm
24 Water Permit coverage in violation of the Storm Water Permit and/or Sections 301(a) of
25 the Clean Water Act. 33 U.S.C. §§ 1311(a).

26 231. Every storm water discharge associated with industrial activities from the
27 Fox Hills Facility without NPDES permit coverage is a separate and distinct violation of
28 the Clean Water Act and the Storm Water Permit.

232. The Fox Hills Facility Owner and/or Operator has been in daily and

1 continuous violation of the requirement to obtain and comply with the Storm Water
2 Permit and/or an individual NPDES permit every day since the beginning of operations.
3 These violations are ongoing and continuous.

4 233. By committing the acts and omissions alleged above, the Fox Hills Facility
5 Owner and/or Operator is subject to an assessment of civil penalties for each and every
6 violation of the CWA occurring from December 13, 2011 to the present pursuant to
7 Sections 309(d) and 505 of the CWA, 33 U.S.C. §§ 1319(d), 1365, and 40 C.F.R. § 19.4.

8 234. An action for injunctive relief under the CWA is authorized by Section
9 505(a) of the CWA, 33 U.S.C. § 1365(a). Continuing commission of the acts and
10 omissions alleged above would irreparable harm Coastkeeper, its members, and the
11 citizens of the State of California, for which harm they would have no plain, speedy, or
12 adequate remedy at law.

13 235. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a) because
14 an actual controversy exists as to the rights and other legal relations of the Parties.

15 WHEREFORE, Plaintiff prays for judgment against the Defendant as set forth
16 hereafter.

17 **VII. RELIEF REQUESTED**

18 236. Wherefore, Plaintiff respectfully requests that this Court grant the following
19 relief:

20 a. A Court order declaring Defendant to have violated and to be in
21 violation of Sections 301(a) and (b) and 402 of the Clean Water Act, 33 U.S.C. §§
22 1311(a) and (b); for its unlawful discharges of pollutants from the Fox Hills Facility in
23 violation of a permit issued pursuant to Section 402(p) of the CWA, 33 U.S.C. §
24 1342(p), for failing to meet effluent benchmarks, standards, or limitations which
25 include BAT/BCT requirements, and for failing to comply with the substantive and
26 procedural requirements of the Storm Water Permit and the CWA.

27 b. A Court order enjoining Defendant from violating the substantive and
28 procedural requirements of the Storm Water Permit and Sections 301(a) and 402 of

1 the CWA, 33 U.S.C. §§ 1311(a), 1342;

2 c. A Court order assessing civil monetary penalties for each violation of
3 the CWA occurring prior to November 2, 2015 at \$37,500 per day per violation, as
4 permitted by 33 U.S.C. § 1319(d) and Adjustment of Civil Monetary Penalties for
5 Inflation, 40 C.F.R. § 19.4 (2009);

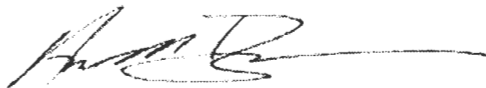
6 d. A Court order assessing civil monetary penalties for each violation of
7 the CWA occurring on or after November 2, 2015 at \$51,750 per day per violation, as
8 permitted by 33 U.S.C. § 1319(d) and Adjustment of Civil Monetary Penalties for
9 Inflation, 40 C.F.R. § 19.4 (2016);

10 e. A Court order awarding Plaintiff its reasonable costs of suit, including
11 attorney, witness, expert, and consultant fees, as permitted by Section 505(d) of the
12 Clean Water Act, 33 U.S.C. § 1365(c); and

13 f. Any other relief as this Court may deem appropriate.
14

15 Dated: February 13, 2017

Respectfully submitted,

17 

19 _____
20 Anthony M. Barnes
21 AQUA TERRA AERIS LAW GROUP
22 Attorneys for Plaintiff
23 Orange County Coastkeeper
24
25
26
27
28

EXHIBIT A



December 13, 2016

VIA CERTIFIED MAIL – Return Receipt Requested

Frank Reilly – Vice President &
Agent for Service of Process
Fox Hills Industries, Inc.
Fox Hills Casting Industries, Inc.
5831 Research Drive
Huntington Beach, CA 92649-1349

Doug Reichard - President
One Source Casting Corporation
Fox Hills Industries, Inc.
9 Backus Street
Newark, NJ 07105

Steve Pashkutz – General Manager
Fox Hills Industries, Inc.
Fox Hills Casting Industries, Inc.
5831 Research Drive
Huntington Beach, CA 92649-1349

Re: Notice of Violation and Intent to File Suit Under the Clean Water Act

To Whom It May Concern:

I am writing on behalf of Orange County Coastkeeper (“Coastkeeper”) regarding violations of the Clean Water Act¹ and California’s Industrial Storm Water Permit² (“Storm Water Permit”) occurring at the Fox Hills Industries, Inc. facility (also known as, Fox Hills Casting Industries, Inc.) located at 5831 Research Drive, Huntington Beach, CA 92649 (the “Facility” or the “Fox Hills Facility”). Upon information and belief, Fox Hills Industries, Inc. is owned and operated by One Source Casting Corporation, a Delaware Corporation. For the purpose of this Notice and Intent letter, Fox Hills Industries, Inc. and One Source Casting Corporation, will be referred to as “Fox Hills Industries.”³ The purpose of this letter is to put Fox Hills Industries, as the owners and operators of the Facility, on notice of the violations of the Storm Water Permit and the Clean Water Act occurring at the Facility, including, but not limited to, discharges of polluted storm water from the Facility into local surface waters. Violations of the Storm Water Permit are violations of the Clean Water Act. As explained below, Fox Hills Industries is liable for violations of the Storm Water Permit and the Clean Water Act.

Section 505 of the Clean Water Act allows citizens to bring suit in federal court against facilities alleged to be in violation of the Clean Water Act and/or related Permits. Section 505 of the Clean Water Act allows citizens to bring suit in federal court against facilities alleged to be in

¹ Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.*

² National Pollution Discharge Elimination System (“NPDES”) General Permit No. CAS000001, Water Quality Order No. 92-12-DWQ, Order No. 97-03-DWQ, as amended by Order No. 2015-0057-DWQ.

³ The owners and/or operators of the Facility are identified in Section I (B) below and referred to hereinafter as the “the Facility Owners and/or Operators” or “Owners and/or Operators.”



violation of the Clean Water Act and/or related permits. Section 505(b) of the Clean Water Act, 33 U.S.C. § 1365(b), requires that sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Clean Water Act, 33 U.S.C. § 1365(a), a citizen must give notice of his/her intention to file suit. Notice must be given to the alleged violator, the Administrator of the United States Environmental Protection Agency ("EPA"), the Regional Administrator of the EPA, the Executive Officer of the water pollution control agency in the State in which the violations occur, and, if the alleged violator is a corporation, the registered agent of the corporation. *See* 40 C.F.R. § 135.2(a)(1). This letter is being sent to you as the responsible owners and/or operators of the Fox Hills Industries Facility, or as the registered agent for this entity. This notice letter ("Notice Letter") is issued pursuant to 33 U.S.C. §§ 1365(a) and (b) of the Clean Water Act to inform Fox Hills Industries that Coastkeeper intends to file a federal enforcement action against Fox Hills Industries for violations of the Storm Water Permit and the Clean Water Act sixty (60) days from the date of this Notice Letter.

Specifically, this letter constitutes notice of Coastkeeper's intent to sue Fox Hills Industries for its violations of Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311, 1342, and California's General Industrial Storm Water Permit, National Pollution Discharge Elimination System ("NPDES") General Permit No. CAS000001 ("Storm Water Permit"), Water Quality Order No. 97-03-DWQ ("1997 Permit"), as superseded by Order No. 2014-0057-DWQ ("2015 Permit"). The 1997 Permit was in effect between 1997 and June 30, 2015, and the 2015 Permit went into effect on July 1, 2015. As explained below, the 2015 Permit includes many of the same fundamental requirements, and implements many of the same statutory requirements, as the 1997 Permit. Violations of these requirements constitute ongoing violations for purposes of CWA enforcement.

I. BACKGROUND

A. Orange County Coastkeeper

Orange County Coastkeeper is a non-profit public benefit corporation organized under the laws of the State of California with its office at 3151 Airway Avenue, Suite F-110, Costa Mesa, California 92626. Coastkeeper has over 2,000 members who live and/or recreate in and around the Anaheim Bay and Huntington Harbor watershed. Coastkeeper is dedicated to the preservation, protection, and defense of the environment, wildlife, and natural resources of Orange County. To further these goals, Coastkeeper actively seeks federal and state agency implementation of the Clean Water Act, and, where necessary, directly initiates enforcement actions on behalf of itself and its members.

Members of Coastkeeper use and enjoy the waters that Fox Hills Industries discharges into, including Sunset Bay - Huntington Harbor, and Anaheim Bay—Seal Beach National Wildlife Refuge, and Anaheim Bay - Outer Harbor. Members of Coastkeeper use and enjoy Huntington Harbor and the Anaheim Bay to participate in water sports and other water activities, view wildlife, and engage in scientific study including monitoring activities. The discharge of pollutants from the Facility impairs each of these uses. Further, discharges of polluted storm



water from the Facility are ongoing and continuous. Thus, the interests of Coastkeeper's members have been, are being, and will continue to be adversely affected by Fox Hills Industries' failure to comply with the Clean Water Act and the Storm Water Permit.

B. The Owners and/or Operators of the Fox Hills Facility

Information available to Coastkeeper indicates that Fox Hills Industries is owned and operated by One Source Casting Corporation, a Delaware Corporation. Fox Hills Casting Industries Inc., is an active California Corporation with California entity number C2329506 and registered agent for service of process: Frank Reilly, 5831 Research Drive, Huntington Beach, CA 92649. The registered California entity lists their entity address with the California Secretary of State as 5831 Research Drive, Huntington Beach, CA 92649.

Information available to Coastkeeper indicates that the Facility is comprised of Assessor's Parcel Number(s) ("APN"): 14545205 (5831 Research Drive, Huntington Beach, CA 92649), and is owned by Fox Hills Casting Industries, Inc. When Coastkeeper refers to owners and operators herein, those legally responsible for Fox Hills Industries are referred to collectively as the Facility "Owners and/or Operators."

The Facility Owners and/or Operators have violated and continue to violate the procedural and substantive terms of their Storm Water Permits and the Clean Water Act for the Facility, including, but not limited to, the illegal discharge of pollutants from into local surface waters. As explained herein, the Facility Owners and/or Operators are liable for violations of the Storm Water Permits and the Clean Water Act.

C. The Fox Hills Facility's Storm Water Permit Coverage

Certain classified facilities that discharge storm water associated with industrial activity are required to apply for coverage under the Storm Water Permit by submitting a Notice of Intent ("NOI") to the State Water Resources Control Board ("State Board") to obtain Storm Water Permit coverage. *See* Storm Water Permit, Finding #12. Upon information and belief, Fox Hills Industries obtained Storm Water Permit coverage for the Facility on March 18, 1992, and later obtained coverage under the 1997 Permit. On February 17, 2015 Fox Hills Industries submitted an NOI for coverage under the 2015 Permit. The Facility NOI identifies the owner/operator of the Facility as Fox Hills, with an address of 5831 Research Drive, Huntington Beach, CA 92649.

The NOI lists the Facility site size as one (1) acre, with one (1) acre of industrial area exposed to Storm Water. The Industrial Receipt letter from the State Board to Fox Hills, dated October 6, 2016, provides 8 30I000689 as the Waste Discharge Identification ("WDID") number for the Facility.

The NOI lists the Primary Standard Industrial Classification ("SIC") code for the Facility as 3369 (Nonferrous Foundries, Except Aluminum and Copper). The Storm Water Permit classifies facilities with SIC code 3369 under "Nonferrous Foundries (Castings)." *See* 1997



Permit at Table D; 2015 Permit §XI(B) Table 1. However, the South Coast Air Quality Management District lists the SIC code for the Facility as 3321 (Iron and Steel Foundries).

D. Storm Water Pollution and the Waters Receiving the Fox Hills Facility's Discharges

With every significant rainfall event millions of gallons of polluted storm water originating from industrial operations such as the Fox Hills Industries Facility pour into storm drains and local waterways. The consensus among agencies and water quality specialists is that storm water pollution accounts for more than half of the total pollution entering surface waters each year. Such discharges of pollutants from industrial facilities contribute to the impairment of downstream waters and aquatic dependent wildlife. These contaminated discharges can and must be controlled for the ecosystem to regain its health.

Polluted discharges from industrial manufacturing facilities such as the Facility can contain pH-affecting substances; metals, such as iron and aluminum; toxic metals, such as lead, zinc, nickel, cadmium, chromium, copper, arsenic, and mercury; chemical oxygen demand ("COD"); biological oxygen demand ("BOD"); total suspended solids ("TSS"); total organic carbon ("TOC") benzene; gasoline and diesel fuels; cyanide; ammonia-N; fuel additives; coolants; antifreeze; nitrate + nitrite nitrogen ("N+N"); specific conductance affecting substances; trash; and oil and grease ("O&G"). Many of these pollutants are on the list of chemicals published by the State of California as known to cause cancer, birth defects, and/or developmental or reproductive harm. Discharges of polluted storm water to Huntington Harbor and Anaheim Bay pose carcinogenic and reproductive toxicity threats to the public and adversely affect the aquatic environment.

The Facility discharges into the Bolsa Chica Channel. The Bolsa Chica Channel is tributary to Sunset Bay – Huntington Harbor, Anaheim Bay – Seal Beach National Wildlife Refuge, and Anaheim Bay – Outer Bay, collectively referred to herein as the "Receiving Waters." Discharges of polluted storm water to the Receiving Waters pose carcinogenic and reproductive toxicity threats to the public and adversely affect the aquatic environment.

The Receiving Waters are ecologically sensitive areas. Although pollution and habitat destruction have drastically diminished once-abundant and varied species, these waters are still essential habitat for dozens of fish and bird species as well as macro-invertebrate and invertebrate species. Storm water and non-storm water contaminated with sediment, heavy metals, and other pollutants harm the special aesthetic and recreational significance that the Receiving Waters have for people in the surrounding communities. The public's use of local waterways exposes many people to toxic metals and other contaminants in storm water discharges. Non-contact recreational and aesthetic opportunities, such as wildlife observation, are also impaired by polluted discharges to the Receiving Waters.

The California Regional Water Quality Control Board, Santa Ana Region Regional Board ("Regional Board") issued the *Santa Ana River Basin Water Quality Control Plan* ("Basin



Plan”). The Basin Plan identifies the “Beneficial Uses” of water bodies in the region. The existing and/or potential Beneficial Uses for Bolsa Chica Channel include, at a minimum: warm freshwater habitat (WARM); and water contact recreation (REC1). The Beneficial Uses for Sunset Bay - Huntington Harbor include: navigation (NAV); water contact recreation (REC1); non-contact water recreation (REC2); commercial and sportfishing (COMM); wildlife habitat (WILD); rare, threatened or endangered species (RARE); spawning reproduction and development (SPWN); marine habitat (MAR); water contact recreation (REC1); non-contact water recreation (REC2); warm freshwater habitat (WARM); wildlife habitat (WILD); rare, threatened or endangered species (RARE); spawning reproduction and development (SPWN); and marine habitat (MAR). The Beneficial Uses for Anaheim Bay—Seal Beach National Wildlife Refuge include: water contact recreation (REC1); non-contact water recreation (REC2); preservation of biological habitats of special significance (BIOL); wildlife habitat (WILD); rare, threatened or endangered species (RARE); spawning reproduction and development (SPWN); marine habitat (MAR); and estuarine habitat (EST). The Beneficial Uses for Anaheim Bay—Outer Bay include: water contact recreation (REC1); non-contact water recreation (REC2); preservation of biological habitats of special significance (BIOL); wildlife habitat (WILD); rare, threatened or endangered species (RARE); spawning reproduction and development (SPWN); and marine habitat (MAR). *See* Basin Plan at Table 3-1.

According to the 2012 303(d) List of Impaired Water Bodies, Bolsa Chica Channel is impaired for ammonia, indicator bacteria, and pH.⁴ Sunset Bay - Huntington Harbor is impaired for pathogens, copper, lead, chlordane, nickel, polychlorinated biphenyls, and sediment toxicity.⁵ Anaheim Bay – Outer Bay and Anaheim Bay – Seal Beach National Wildlife Refuge are impaired for dieldrin, nickel, polychlorinated biphenyls, and sediment toxicity.⁶ Polluted discharges from industrial sites, such as the Facility, contribute to the degradation of these already impaired surface waters and aquatic-dependent wildlife that depends on these waters.

II. THE FOX HILLS FACILITY AND ASSOCIATED DISCHARGES OF POLLUTANTS

A. The Fox Hills Facility Site Description and Industrial Activities

Information available to Coastkeeper indicates the Facility (APN 14545205) is located in Huntington Beach, CA 92649 near the intersection Research Drive and Product Lane, specifically at the address of 5831 Research Drive, Huntington Beach, CA 92649.

The Facility is a brass and bronze foundry that produces parts for water pumps. Onsite industrial activities include off-loading of casting ingots and supplies, solids handling,

⁴ 2012 Integrated Report – All Assessed Waters, available at http://www.waterboards.ca.gov/water_issues/program/stm/2012state_ir_reports/category5_report.shtml (last accessed on December 7, 2016).

⁵ Id.

⁶ Id.



preparation of brass charges, brass and metal melting and pouring, production of sand molds and cores, casting shakeout, cutoff operations, waste and recyclable metal dust management, brass finishing and final product storage and shipping. Slag waste, refractory, and baghouse sand and metal dust are pollutant byproducts of the processes. The Facility operates multiple systems including a sand handling system (mixing foundry sand and liquid phenolic resin to make molds for casting parts) as well as furnaces, baghouses, core ovens vented to an afterburner and an abrasive blasting machine. According to the SWPPP, the Facility employs approximately 25 people and operates 8 hours per day, five days per week. (However, Coastkeeper is informed and believes that the Facility operates afterhours, including but not limited to, working hours on the weekend.) Delivery and pick up of raw and finished materials are made on a daily basis. Metallic manufacturing often also includes powder metallurgy, metal mold casting, joining, smelting, and other industrial requirements. Oil and other lubricants are key components in these processes.

Information available to Coastkeeper indicates that the Facility has two (2) manufacturing buildings which operate with open roll-up doors. The buildings include foundry areas, core rooms, oven rooms, molding rooms, oil and lubricant storage areas, full and empty drum storage areas, sand storage areas, areas for management of waste and metal dust, shipping areas, parking lots, scrap metal bins, other garbage bins/cans, coolant areas, boneyards or areas for broken manufacturing machinery, propane, propylene, oxygen gas and diesel fuel storage and use areas, and various heavy equipment employed for a variety of purposes. Track-out of sand, brass and other metal particulate by vehicle and foot traffic, and other fugitive emissions, impact the environment outside of the manufacturing buildings. Other industrial activities and storage occur outside, without adequate cover, containment or other measures, resulting in discharges of polluted storm water, such as baghouse dust storage and sand reclamation, scrap metal storage, work-in-progress casting storage, and storage of equipment, and raw materials and finished product, leading to the occurrence of fugitive dust and other pollutants. These activities create significant pollutant sources at the Facility.

Information available to Coastkeeper indicates that Fox Hills Industries primary objective at the Facility is the manufacture and sale of abrasion, corrosion, and heat-resistant iron and brass castings, and completed brass and alloy charges and parts, accomplished through brass and alloy melting, pouring and product finishing. Fox Hills Industries accomplishes this by maintaining areas primarily dedicated to raw material storage, pouring, shakeout, grinding and finishing, welding, oil and coolant storage, industrial chillers, office space, mold making and molding, employee parking, chemical, diesel, and oil drums storage, and areas for loading/unloading. Pollutants associated with operations at the Facility include, but are not limited to: pH-affecting substances; metals, such as, iron and aluminum; toxic metals, such as lead, copper and zinc; TSS; gasoline and diesel fuels; fuel additives; coolants; trash; specific conductance affecting substances; nitrate as nitrogen, and O&G.

Information available to Coastkeeper indicates Fox Hills Industries has not properly developed and/or implemented the required best management practices ("BMPs") to address pollutant sources and contaminated discharges. BMPs are necessary at the Facility to prevent the exposure of pollutants to precipitation and the subsequent discharge of polluted storm water from



the Facility during rain events. Consequently, during rain events storm water carries pollutants from the Facility's raw and finished material, oil, and chemical storage areas, parking areas, fueling and maintenance areas, loading and unloading areas, garbage and refuse storage areas, scrap metal areas, equipment washing areas, and other areas into the municipal separate storm sewer system, which flows into the Receiving Waters, in violation of the Storm Water Permit.

Information available to Coastkeeper also indicates that O&G, ammonia, metal particulates, particulates of chemically polluted sand and dust have been and continue to be tracked from the manufacturing buildings, raw material and refuse storage areas, parking areas, and equipment maintenance and washing areas throughout the Facility. Further, numerous pollutants are believed to accumulate on the roofs of the Facility due to emissions from electric induction furnaces and other heating and air discharge equipment, resulting in polluted storm water discharges into the MS4⁷ system. In addition to the roofs, these pollutants accumulate near parking, and loading and unloading areas, and the driveways leading into the Facility. As a result, trucks and vehicles leaving the Facility via the driveways are pollutant sources tracking sediment, dirt, O&G, ammonia and metal particles, and other pollutants off-site.

B. The Fox Hills Facility's Storm Water Flow and Discharge Locations

Information available to Coastkeeper indicates that storm water polluted by Fox Hills Industries' industrial operations at the Facility is discharged to Receiving Waters via at least two discharge points: the first discharge point ("Discharge Point #1") located to the south, in the center of the Facility, between the two manufacturing buildings at the front gate, prior to entering parking areas, and appears to flow out of a driveway onto Research Drive. The second discharge point ("Discharge Point #2") is located near the northwest corner of the Facility, at the rear gate and driveway, with storm water flowing onto Product Lane. A third discharge point is suspected near the southwest corner of the Facility where another driveway allows access to a Facility parking area, and out to Product Lane. Discharge Point #1 accepts much of the storm water flow from behind and between the manufacturing buildings and flows past industrial chilling areas, a welding area, various gas storage, and metal dust and debris storage, and then travels through the main driveway, exiting the Facility site; Discharge Point #2 accepts storm water flow from behind the manufacturing buildings, and flows past a series of outside storage areas and exits out the driveway at the rear gate. The third discharge point appears to take storm water overflow from the Discharge Point #1 and the western side of the parking area, and out to Product Lane. The Facility Storm Water Pollution Prevention Plan ("SWPPP") does not identify down spouts from the roofed areas of the manufacturing buildings; it is unknown which discharge points handle storm water runoff originating from roofed areas. Once storm water is discharged from the site into storm water drain inlets, it enters the storm drain system. From the MS4, storm water enters Huntington Harbor.

Information available to Coastkeeper also indicates that outdoor areas at the Facility are littered with used machinery and equipment, leaking drums and worn, stained and unused pallets,

⁷ MS4 is defined as municipal separate storm sewer systems.



all without adequate secondary containment, uncovered and stored on the ground, all of which are exposed to storm water. Information available to Coastkeeper also indicates that the Facility has large air conditioning and cooling units that produce non-storm water discharges.

III. VIOLATIONS OF THE CLEAN WATER ACT AND THE STORM WATER PERMITS

The Clean Water Act requires that any person discharging pollutants to a water of the United States from a point source⁸ obtain coverage under an NPDES permit. *See* 33 U.S.C. §§ 1311(a), 1342; 40 CFR § 122.117(c)(1). CWA § 402 further requires each discharger to meet minimum technology-based treatment requirements. Discharges of toxic pollutants must be treated pursuant to the best available technology ("BAT"), 33 U.S.C. § 1311 (b)(2)(A), and other pollutant discharges must comply with best conventional technology ("BCT"). 33 U.S.C. § 1311(b)(2)(E).

In addition to implementing technology-based controls, each point source discharger must achieve "any more stringent limitation necessary to meet water quality standards[.]" 33 U.S.C. § 1311(b)(1)(C). Water quality standards establish the water quality goals for a water body. 40 C.F.R. § 131.2. They serve as the regulatory basis for the establishment of water quality-based controls over point sources, as required under § 301 and § 306 of the CWA. Once water quality standards are established for a particular water body, any NPDES permit authorizing discharges of pollutants into that water body must ensure that the applicable water quality standard will be met. 33 U.S.C. § 1311 (b)(1)(C); 40 C.F.R. §§ 122.4(d), 122.4(i), 122.44(d).

Between 1997 and June 30, 2015, the Storm Water Permit in effect was Order No. 97-03-DWQ, which Coastkeeper refers to as the "1997 Permit." The 1997 Permit requires dischargers meet all applicable provisions of Sections 301 and 402 of the CWA. Rather than requiring specific application of BAT and BCT techniques to each storm water discharge, compliance with the terms and conditions of the 1997 Permit served as a proxy for meeting the BAT/BCT mandate. *See* 1997 Permit, Finding 10. Conversely, failure to comply with the terms and conditions of the 1997 Permit constitutes failure to subject discharges to BAT/BCT, and is a violation of the CWA.

On July 1, 2015, pursuant to Order No. 2015-0057-DWQ the Storm Water Permit was reissued, and includes the same fundamental terms as the prior permit. For purposes of this Notice Letter, Coastkeeper refers to the reissued permit as the "2015 Permit." The 2015 Permit retains this core statutory requirement to meet BAT/BCT standards. Just like the 1997 Permit, the 2015 Permit requires all facility operators to develop and implement SWPPP that includes

⁸ A point source is defined as any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. 33 U.S.C. § 1362(14); *see* 40 C.F.R. § 122.2



BMPs, although the 2015 Permit now requires operators to implement certain minimum BMPs, as well as advanced BMPs as necessary, to achieve compliance with the effluent and receiving water limitations of the 2015 Permit. In addition, the 2015 Permit requires all facility operators to sample storm water discharges more frequently than the 1997 Permit, and to compare sample and analytical results with numeric action levels ("NALs"). All facility operators are required to perform Exceedance Response Actions ("ERAs") as appropriate whenever sampling indicates NAL exceedances.

Industrial activities conducted at the Facility under SIC code 3369, and upon information and belief, SIC code 3321, requires Fox Hills Industries to obtain Storm Water Permit coverage the Facility. Both the 1997 Permit and the 2015 Permit generally require facility operators to: (1) submit a Notice of Intent ("NOI") that certifies the type of activity or activities undertaken at the facility and committing the operator to comply with the terms and conditions of the permit; (2) eliminate unauthorized non-storm water discharges; (3) develop and implement a SWPPP; (3) perform monitoring of storm water discharges and authorized non-storm water discharges; and (4) file an Annual Report that summarizes the year's industrial activities and compliance with the Storm Water Permit.

A. Discharges of Polluted Storm Water from the Fox Hills Facility in Violation of Storm Water Permit Effluent Limitations

The Storm Water Permit states that storm water discharges from facilities shall not exceed specified effluent limitations. 1997 Permit, Effluent Limitation B(1); 2015 Permit, Effluent Limitation V.B. Compliance with the effluent limitation guidelines constitutes compliance with best available technology economically achievable ("BAT") and best conventional pollutant control technology ("BCT") for the specified pollutants and must be met to comply with the Storm Water Permit. 1997 Permit, Fact Sheet at VIII; 2015 Permit, Fact Sheet at pp. 15-17.

Certain activities undertaken at the Facility pose significant risks to water quality, including outdoor storage of raw and finished materials, chemical and oil drums, old unused machinery, and metal shavings and dust and other scrap metal. The Facility 2015 SWPPP indicates in the List of Industrial Materials that materials present the Facility include, raw metals including brass and zinc, oils and lubricants, bag house dust, castings, raw sand, furan and pepset.

Because manufacturing facilities using metals are likely to discharge storm water runoff that is contaminated, the EPA provides a storm water fact sheet for Primary Metals Facilities. *See* Environmental Protection Agency, *Sector F: Primary Metals Facilities* (EPA-833-F-06-021) December 2006 ("Sector F Fact Sheet").⁹ The fact sheet offers facility operators guidance on how to prepare storm water management programs that are appropriate for their facility and operations. Table 1 of the Sector F Fact Sheet sets forth the EPA chart regarding the various pollutant sources and pollutants that are typically associated with facilities such as the Fox Hills

⁹ Available at: https://www3.epa.gov/npdes/pubs/sector_f_primarymetals.pdf (last accessed on December 7, 2016)



Industries Facility. Despite this EPA guidance, and the known impairments to the Receiving Waters, Fox Hills Industries does not test for nickel, and has not tested for lead since 2013. Upon information and belief, the Facility did not sample or test any storm water discharges in 2012.

B. Applicable Effluent Standards or Limitations

The Storm Water Permit requires all industrial facilities to sample and analyze storm water discharges for the following parameters: pH, total suspended solids ("TSS"), specific conductance ("SC")¹⁰, and total organic carbon ("TOC") or oil and grease ("O&G"). See 1997 Permit, § B(5)(c)(i); 2015 Permit, §§ XI(B)(6)(a), (b). Facilities classified under SIC code 3369 – Nonferrous Foundries, Except Aluminum and Copper – must also sample and analyze samples for zinc ("Zn") and copper ("Cu"). Facilities classified under SIC code 3321 – Iron and Steel Foundries – must also sample and analyze samples for iron ("Fe"), aluminum ("Al"), zinc ("Zn") and copper ("Cu"). See 1997 Permit at Table D; 2015 Permit, § VI(B) at Table 1.

The EPA has published "benchmark" levels as numeric thresholds for helping to determine whether a facility discharging industrial storm water has implemented the requisite BAT and BCT mandated by the CWA. See *United States Environmental Protection Agency NPDES Multi-Sector General Permit for Storm Water Discharges Associated with Industrial Activity*, as modified effective May 27, 2009. These benchmarks represent pollutant concentrations at which a storm water discharge could potentially impair, or contribute to impairing, water quality, or affect human health from ingestion of water or fish. EPA benchmarks have been established for pollutants discharged by the Facility, and include: TSS—100 mg/L; SC—200 uhmos/cm; O&G—15 mg/L; Zn—0.117 mg/L; Cu—.0123 mg/L; and pH—6.0-9.0 s.u. However, the Basin Plan contains narrower effluent levels for pH: for bays and estuary waters, pH—7.0-8.6 s.u; for inland surface waters, pH —6.5-8.5 s.u.

The Criteria for Priority Toxic Pollutants in the State of California, or California Toxics Rule ("CTR"), set forth in 40 C.F.R. § 131.38, establishes numeric receiving water limits for certain toxic pollutants in California surface waters. The CTR sets forth lower numeric limits for Zinc and other pollutants; CTR criteria can be as low as 0.067 mg/L for zinc in freshwater surface waters with water hardness calculation of 50 mg/L.¹¹ Coastkeeper puts Fox Hills Industries on notice that they have violated, and continue to violate the CTR, and by extension the CWA, for Zinc and other constituents each time polluted storm water discharges from the Facility.

¹⁰ The 2015 Permit no longer requires testing for Specific Conductance.

¹¹ The CTR numeric limits, or "criteria," are expressed as dissolved metal concentrations in the CTR, but the Storm Water Permit required permittees to report their sample results as total metal concentrations. See 1997 Permit § B(10)(b); 2015 Permit, Attachment H at 18. To compare sample results reported by the Facility with the CTR criteria, Coastkeeper will use the CTR criteria converted to total metal concentrations set forth in the State Board's "Water Quality Goals" database. The formula used to convert the CTR criteria to total metal concentrations is set forth in the CTR at 40 C.F.R. § 131.38(b)(2)(i). The applicable CTR criteria also requires a hardness value.



Storm water sampling at the Facility demonstrates that storm water discharges contain concentrations of pollutants above the applicable Effluent Limits. For example, based upon a hardness value of 75-100 mg/L for the receiving waters, the effluent limitation based upon BPT and BAT for Cu is .0123 mg/L. *See* 2015 Permit, Appendix J, "Calculating Hardness in Receiving Waters for Hardness Dependent Metals."¹² Self-reported testing submitted to the Regional Water Quality Control Board (RWQCB) showed exceedances of the EPA Benchmark for Cu, among others, by magnitudes of 520.33, 292.68, and 284.55 at the Facility. *See* Exhibit A.

Information available to Coastkeeper indicates that the Facility Owners and/or Operators violate the Storm Water Permit by discharging storm water containing pollutants in excess of, or outside the range of, the applicable effluent limitations each time Fox Hills Industries discharges storm water from the Facility. *See, e.g.,* Exhibit B. These discharge violations are ongoing and will continue every day the Owners and/or Operators discharge storm water from the Facility that contains concentrations of pollutants in excess of, or outside the range of, the applicable effluent limitations. Coastkeeper will include additional violations as information and data become available. Further, given that the Owners and/or Operators effluent limitation violations are ongoing, and recent test results indeed evidence additional effluent violations, Coastkeeper also puts the Facility Owners and/or Operators on notice that Effluent Limitation V.B. of the 2015 Permit is violated each time storm water is discharged from the Facility after July 1, 2015. Each time the Facility Owners and/or Operators discharge polluted storm water in violation of Effluent Limitation B(3) of the Storm Water Permit and Effluent Limitation V.B. of the 2015 Permit is a separate and distinct violation of the Storm Water Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. §1311(a). The Facility Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since December 13, 2011.

C. Discharges of Polluted Storm Water from the Fox Hills Facility in Violation of BAT/BCT

The Storm Water Permit and Clean Water Act require dischargers to reduce or prevent pollutants associated with industrial activity in storm water discharges through implementation of BMPs that achieve BAT for toxic¹³ and non-conventional pollutants and BCT for conventional pollutants.¹⁴ 33 U.S.C. §§ 1311 (b)(2)(A) and (b)(2)(E); 1997 Permit, Effluent Limitation B(3); 2015 Permit, Effluent Limitation V.A. The Federal Effluent Limitations define application of BAT for TSS and pH as numeric effluent limitations. A discharge of storm water which exceeds the Federal Effluent Limitations is a failure to achieve BAT/BCT. Further, EPA Benchmarks are relevant and objective standards for evaluating whether a permittee's BMPs achieve compliance with BAT/BCT standards.¹⁵

¹² Available at: https://www.epa.gov/sites/production/files/2015-10/documents/msgp2015_appendixj.pdf

¹³ Toxic pollutants are listed at 40 C.F.R. § 401.15 and include copper, lead, and zinc, among others.

¹⁴ Conventional pollutants are listed at 40 C.F.R. § 401.16 and include biochemical oxygen demand, TSS, oil and grease, pH, and fecal coliform.

¹⁵ *See United States Environmental Protection Agency (EPA) National Pollutant Discharge Elimination System (NPDES) Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (MSGP)*



Information available to Coastkeeper demonstrates that the Facility Owners and/or Operators have failed and continue to fail to develop and/or implement BMPs at the Facility that achieve compliance with the BAT/BCT standards. Consistent with Fox Hills Industries' lack of adequate BMPs, the analytical results of storm water sampling at the Facility demonstrates the Owners and/or Operators have failed and continue to fail to implement BAT/BCT. Specifically, analysis of discharges from the Facility demonstrates that the storm water discharges consistently contain concentrations of pollutants above the Federal Effluent Limitations and EPA Benchmarks. *See, e.g.,* Exhibit A. For example, a Federal Effluent Limitation for Zn is .26 mg/L and the EPA Benchmark is .117 mg/L. A storm water sample that Fox Hills Industries collected from the Facility in September of 2014 exceeded the Federal Effluent Limitation by 4.23 times and the EPA Benchmark by 9.4 times. Testing for Zn from February 2013 through February 2016 shows 12 exceedances of both the Federal Effluent Limitation and the EPA Benchmark, including years where only one storm event was sampled, and a year which did not include testing for zinc, copper, or lead.

As noted above in Section III(B), with a hardness value for the receiving waters of 75-100 mg/L, the EPA Benchmark for Cu is .0123 mg/L. Testing for Cu between February 2013 and February 2016 shows exceedances of the EPA Benchmark level by magnitudes of 284.55, 186.99, 154.47, 292.68, 97.56, 520.33, 130.08, 75.61, 178.86, 121.95, 79.67, and 89.43. The repeated and significant exceedances of the EPA Benchmark demonstrate that the Facility Owners and/or Operators have failed to develop and/or implement required BMPs at the Facility that achieve compliance with the BAT/BCT standards.

Information available to Coastkeeper indicates that the Facility Owners and/or Operators violate the Storm Water Permit and CWA for failing to develop and/or implement BMPs that achieve BAT/BCT each time Fox Hills Industries discharges storm water from the Facility. *See, e.g.,* Exhibit B. These discharge violations are ongoing and will continue every time Fox Hills Industries discharges polluted storm water without developing and/or implementing BMPs that achieve compliance with the BAT/BCT standards. Coastkeeper will update the dates of violations when additional information and data become available. Further, given that the Facility Owners and/or Operators' effluent limitation violations are ongoing, and recent samples show additional exceedances, Coastkeeper also puts the Owners and/or Operators on notice that Effluent Limitation V.A. of the 2015 Permit is violated each time storm water is discharged from the Facility after July 1, 2015. Each time Fox Hills Industries discharges polluted storm water in violation of Effluent Limitation B(3) of the Storm Water Permit and Effluent Limitation V.A. of the 2015 Permit is a separate and distinct violation of the Storm Water Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). The Facility Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since December 13, 2011.

Authorization to Discharge Under the National Pollutant Discharge Elimination System, as modified effective February 26, 2009 ("Multi-Sector Permit") at 136; *see also*, 65 Federal Register 64851 (2000).



D. Discharges of Polluted Storm Water from the Fox Hills Facility in Violation of Receiving Water Limitations

The Storm Water Permit and the CWA prohibit storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of an applicable Water Quality Standard ("WQS").¹⁶ 33 U.S.C. § 1311 (b)(1)(C); 40 C.F.R. §§ 122.4(d), 122.4(i), 122.44(d); 2015 Permit, Receiving Water Limitation VI.A; 1997 Permit, Receiving Water Limitation C(2). Discharges that contain pollutants in excess of an applicable WQS violate these requirements.

The Storm Water Permit also prohibits storm water discharges and authorized non-storm water discharges to surface water that adversely impact human health or the environment. 1997 Permit, Receiving Water Limitation C(1); 2015 Permit, Receiving Water Limitation VI.B. Discharges that contain pollutants in concentrations that exceed levels known to adversely impact aquatic species and the environment constitute violations of Receiving Water Limitation C(1) of the 1997 Permit, Receiving Water Limitation VI.B. of the 2015 Permit, and the Clean Water Act.

Storm water sampling at the Facility demonstrates discharges contain concentrations of pollutants that cause or contribute to a violation of an applicable WQS. For example, the pH Basin Plan criteria range is between 6.5-8.5 s.u. for inland surface waters such as Bolsa Chica Channel, and 7-8.6 s.u. for estuary and bay water bodies, such as Anaheim Bay. The Facility's December 2014 storm water samples measured 2.67 s.u. and 3.78 s.u., between one thousand and ten thousand times the Basin Plan criteria for pH. These exceedances of WQS demonstrate that Fox Hills Industries has violated and continues to violate Receiving Water Limitation C(2) of the 1997 Permit, and Receiving Water Limitation VI.A. of the 2015 Permit.

As explained herein, the Receiving Waters are impaired, and thus unable to support the designated beneficial uses, and will likely become further impaired with pollutants discharging from the Facility. The 2010 303(d) List of Impaired Water Bodies lists Huntington Harbor, Anaheim Bay and the Bolsa Chica Channel as impaired for multiple pollutants, including pH, copper, lead, ammonia and nickel. Information available to Coastkeeper indicates that the Facility's storm water discharges contain elevated concentrations of pollutants, such as copper and pH, which can be acutely toxic and/or have sub-lethal impacts on the avian and aquatic wildlife in Huntington Harbor, Anaheim Bay, and Bolsa Chica Channel. *See* Exhibit A. Discharges of elevated concentrations of pollutants in the storm water from the Facility also adversely impact human health. These harmful discharges from the Facility are violations of

¹⁶ The Basin Plan designates Beneficial Uses for the Receiving Waters. Water quality standards are pollutant concentration levels determined by the state or federal agencies to be protective of designated Beneficial Uses. Discharges above water quality standards contribute to impairment of Receiving Waters' Beneficial Uses. Applicable water quality standards include, among others, the Criteria for Priority Toxic Pollutants in the State of California, 40 C.F.R. § 131.38 ("CTR"), and water quality objectives in the Basin Plan.



Receiving Water Limitation C(1) of the 1997 Permit and Receiving Water Limitation VI.B. of the 2015 Permit.

Coastkeeper puts the Facility Owners and/or Operators on notice that Receiving Water Limitation C(1) and/or (2) of the 1997 Permit are violated each time polluted storm water discharges from the Facility. *See, e.g.,* Exhibit B. These discharge violations are ongoing and will continue every time contaminated storm water is discharged in violation of Receiving Water Limitation C(1) and/or C(2) of the 1997 Permit. Further, given that the Facility Owners' and/or Operators' receiving water limitation violations are ongoing, and recent test results revealed violations under the 2015 Permit, Coastkeeper also puts the Owners and/or Operators on notice that Receiving Water Limitations VI.A. and VI.B. of the 2015 Permit are violated each time storm water is discharged from the Facility after July 1, 2015. Each time discharges of storm water from the Facility cause or contribute to a violation of an applicable WQS is a separate and distinct violation of Receiving Water Limitation C(1) of the 1997 Permit, Receiving Water Limitation VI.A. of the 2015 Permit VI.A, and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). Each time discharges from the Facility adversely impact human health or the environment is a separate and distinct violation of Receiving Water Limitation C(2) of the 1997 Permit, Receiving Water Limitation VI.B. of the 2015 Permit, and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). Coastkeeper will update the dates of violation when additional information and data becomes available. The Facility Owner and/or Operator is subject to civil penalties for all violations of the Clean Water Act occurring since December 13, 2011.

E. Unauthorized Non-Storm Water Discharges from the Fox Hills Facility

The Storm Water Permit prohibits permittees from discharging materials other than storm water (non-storm water discharges) either directly or indirectly to waters of the United States. 2015 Permit, Discharge Prohibition III.B; 1997 Permit, Discharge Prohibition A(1). Prohibited non-storm water discharges must be either eliminated or permitted by a separate NPDES permit. *See* 1997 Permit, Discharge Prohibition A(1); 2015 Permit, Discharge Prohibition III.B.

Information available to Coastkeeper indicates that unauthorized non-storm water discharges occur at the Facility due to inadequate BMP development and/or implementation necessary to prevent these discharges. For example, upon information and belief, unauthorized non-storm water discharges occur at the Facility from process water, cooling functions, and/or equipment, vehicle and machinery cleaning activities. The Facility Owners and/or Operators conduct these activities without BMPs to prevent related non-storm water discharges. Non-storm water discharges resulting from washing and cleaning are not from sources that are listed among the authorized non-storm water discharges in the Storm Water Permit and thus are always prohibited under the Storm Water Permit.

Coastkeeper puts the Facility Owners and/or Operators on notice that the Storm Water Permit is violated each time non-storm water is discharged from the Facility. These discharge violations are ongoing and will continue until the Facility Owners and/or Operators develop and implement BMPs that prevent prohibited non-storm water discharges or obtain separate NPDES



permit coverage. Each time the Facility Owners and/or Operators discharge prohibited non-storm water in violation of Discharge Prohibition A(1) of the 1997 Permit and Discharge Prohibition III.B. of the 2015 Permit is a separate and distinct violation of the Storm Water Permit and section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). The Facility Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since December 13, 2011.

F. Failure to Develop, Implement, and/or Revise an Adequate Storm Water Pollution Prevention Plan

The Storm Water Permit requires dischargers to have developed and implemented a SWPPP by October 1, 1992, or prior to beginning industrial activities, that meets all of the requirements of the Storm Water Permit. The objectives of the SWPPP requirement are to identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm water discharges from the Facility, and to implement site-specific BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges. These BMPs must achieve compliance with the Storm Water Permit's Effluent Limitations and Receiving Water Limitations. To ensure compliance with the Storm Water Permit, the SWPPP must be evaluated on an annual basis, and must be revised as necessary to ensure compliance with the Storm Water Permit. *See* 1997 Permit, Sections A(1)-A(10) and Provision E(2); 2015 Permit, Sections X.A.-C.

Among other requirements, the SWPPP must include: a site map showing the Facility boundaries, storm water drainage areas with flow patterns, nearby water bodies, the location of the storm water collection, conveyance and discharge system, structural control measures, areas of actual and potential pollutant contact, areas of industrial activity, and other features of the Facility and its industrial activities; a list of significant materials handled and stored at the site; a description of potential pollutant sources, including industrial processes, material handling and storage areas, dust and particulate generating activities, significant spills and leaks, non-storm water discharges and their sources, and locations where soil erosion may occur; and an assessment of potential pollutant sources at the Facility and a description of the BMPs to be implemented at the Facility that will reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges, including structural BMPs where non-structural BMPs are not effective. 1997 Permit Sections A(3)-A(10); 2015 Permit, Section X.D.-H.

Information available to Coastkeeper indicates that the Facility Owners and/or Operators have been and continue to conduct operations at the Facility with an inadequately developed and/or implemented SWPPP. For example, descriptions of BMPs to be implemented at the Facility that will reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges, including structural BMPs where non-structural BMPs are not effective, is inadequate and incomplete, and does not address Cu or Zn, notwithstanding the Facility's history of noncompliance regarding those metals. The Owners and/or Operators have failed to properly revise the Facility's SWPPP to ensure compliance with the Storm Water Permit. The Facility's current SWPPP is recent, dated June 20 15, yet despite the significant concentrations of



pollutants in the Facility's storm water discharges every year since at least the 2012-2013 Wet Season¹⁷, it does include additional, sufficiently effective BMPs to eliminate or reduce these pollutants, as required by the 1997 Permit or the 2015 Permit.

The Facility Owners and/or Operators have failed to adequately develop, implement, and/or revise a SWPPP, in violation of the Storm Water Permit. Every day the Facility operates with an inadequately developed, implemented, and/or properly revised SWPPP is a separate and distinct violation of the Storm Water Permit and the Clean Water Act. The Facility Owners and/or Operators have been in daily and continuous violation of the Storm Water Permit's SWPPP requirements since at least December 13, 2011. These violations are ongoing, and Coastkeeper will include additional violations when information becomes available, including specifically any additional violations of the SWPPP provisions of the 2015 Permit beginning July 1, 2015. The Facility Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since December 13, 2011.

G. Failure to Develop, Implement, and/or Revise an Adequate Monitoring and Reporting Program

Section B(1) and Provision E(3) of the 1997 Permit require Facility Owners and/or Operators to develop and implement an adequate Monitoring and Reporting Program ("M&RP") by October 1, 1992, or prior to the commencement of industrial activities at the Facility, that meets all of the requirements of the Storm Water Permit. The primary objective of the M&RP is to detect and measure the concentrations of pollutants in a facility's discharge to ensure compliance with the Storm Water Permit's Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations. *See* 1997 Permit, Section B(2). The M&RP must therefore ensure that BMPs are effectively reducing and/or eliminating pollutants at the Facility, and must be evaluated and revised whenever appropriate to ensure compliance with the Storm Water Permit. *Id.*

Sections B(5) and B(7) of the 1997 Permit require dischargers to visually observe and collect samples of storm water from all locations where storm water is discharged. Under Section B(5) of the Storm Water Permit, the Facility Owners and/or Operators are required to collect at least two (2) samples from each discharge location at their Facility during the Wet Season. Storm water samples must be analyzed for TSS, pH, total organic carbon or O&G, and other pollutants that are likely to be present in the Facility's discharges in significant quantities. *See* 1997 Permit, Section B(5)(c). The 1997 Permit requires facilities classified as SIC code 3369 – must also sample and analyze samples for Zn and Cu; facilities classified as SIC code 3321 – must also sample and analyze samples for Fe, Al, Zn and Cu. *Id.*; *see also* 1997 Permit, Table D, Sector E.

The Facility Owners and/or Operators have been conducting operations at the Facility with an inadequately developed, implemented, and/or revised M&RP. Upon information and belief, the Facility Owners and/or Operators only collected samples from one Qualifying Storm

¹⁷ The Storm Water Permit defines the Wet Season as October 1 – May 30.



Event (“QSE”) at the Facility in the 2011-2012, 2012-2013, 2013-2014 and 2014-2015 reporting years¹⁸, and as a result under reported for those years, in violation of Section B(5) of the Storm Water Permit. Further, the one QSE sampled in the 2013-2014 reporting year was not tested for copper, zinc, or lead, a constituent that the Facility was testing for at that time – the Facility reported an exceedance of lead in February of 2013. *See* Exhibit A.

Additionally, the Facility Owners and/or Operators failed to provide adequate records, as required by Section B(4) of the 1997 Permit, for the monthly visual observations of storm water discharges. The 1997 Permit further requires dischargers to document the presence of any floating and suspended material, O&G, discolorations, turbidity, odor and the source of any pollutants. Storm Water Permit, Section B(4)(c). Dischargers must document and maintain records of observations, observation dates, locations observed, and responses taken to reduce or prevent pollutants in storm water discharges. *Id.* By reporting a lack of QSE at the Facility, the Owners and/or Operators also violated Section B(5) of the 1997 Permit.

Based on information available to Coastkeeper, the Facility Owners and/or Operators consistently failed to properly collect samples from QSE, and conduct and/or document the required observations of storm water discharges within the first hour of discharge, from all discharge locations, and/or from one qualifying storm event per month. Information available to Coastkeeper indicates that there were approximately 17 storm events in the 2011-2012 reporting year, 14 storm events in the 2012-2013 reporting year, 11 storm events in the 2013-2014 reporting year, and 13 storm events in the 2014-2015 reporting year, where in excess of .1 inch of rainfall was measured at Los Alamitos Army Air Field, in close proximity to the Facility. *See* Exhibit B.

As noted above, the Facility Owners and/or Operators failed to collect and analyze storm water samples as required by the 1997 Permit. The 1997 Permit requires permittees to collect storm water samples during the first hour of discharge from (1) the first storm event of the wet season, and (2) at least one other storm event in the wet season. 1997 Permit, Section B(5)(a). All discharge locations must be sampled. *Id.* Sample collection is only required of storm water discharges that occur during scheduled Facility operating hours and that are preceded by at least three working days without storm water discharge. 1997 Permit, Section B(5)(b).

The Facility Owners’ and/or Operators’ failure to conduct sampling and monitoring as required by the Storm Water Permit demonstrates that it has failed to develop, implement, and/or revise an M&RP that complies with the requirements of Section B and Provision E(3) of the 1997 Permit and Section XI of the 2015 Permit. Every day that the Facility Owners and/or Operators conduct operations in violation of the specific monitoring requirements of the 1997 Permit or the 2015 Permit, or with an inadequately developed and/or implemented M&RP, is a separate and distinct violation of the 1997 Permit or the 2015 Permit, and the Clean Water Act. The Facility Owners and/or Operators has been in daily and continuous violation of the Storm Water Permit’s M&RP requirements every day since at least December 13, 2011. These

¹⁸ A reporting year encompasses a full calendar year from July 1, through June 30 of the following year.



violations are ongoing, and Coastkeeper will include additional violations when information becomes available, including specifically continuing violations of the 2015 Permit monitoring requirements (*see* 2015 Permit, Section XI.). The Facility Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since December 13, 2011.

H. Failure to Comply with the Storm Water Permit's Reporting Requirements

Section B(14) of the 1997 Permit requires a permittee to submit an Annual Report to the Regional Board by July 1 of each year. Section B(14) requires that the Annual Report include a summary of visual observations and sampling results, an evaluation of the visual observation and sampling results, the laboratory reports of sample analysis, the annual comprehensive site compliance evaluation report, an explanation of why a permittee did not implement any activities required, and other information specified in Section B(13). The 2015 Permit includes the same annual reporting requirement. *See* 2015 Permit, Section XVI.

The Facility Owners and/or Operators have failed and continue to fail to submit Annual Reports that comply with the Storm Water Permit reporting requirements. For example, in each Annual Report since the filing in 2011-2012, the Facility Owners and/or Operators certified that: (1) a complete Annual Comprehensive Site Compliance Evaluation was done pursuant to Section A(9) of the Storm Water Permit; (2) the SWPPP's BMPs address existing potential pollutant sources; and (3) the SWPPP complies with the Storm Water Permit, or will otherwise be revised to achieve compliance. However, information available to Coastkeeper indicates that these certifications are erroneous. Storm water samples collected from the Facility have consistently contained concentrations of pollutants above Benchmark Levels, thus demonstrating that the SWPPP's BMPs have never adequately addressed existing potential pollutant sources. Further, the Facility's SWPPP does not include many elements required by the Storm Water Permit, and thus it is erroneous to certify that the SWPPPs comply with the Storm Water Permit. Finally, information available to Coastkeeper suggests that the Facility Owners and/or Operators failed to submit an Annual Report from the 2012-2013 reporting year, though testing data was submitted from one QSE. *See* Section B(14) of the 1997 Permit.

The Facility Owners and/or Operators have also submitted incomplete Annual Reports. For instance, the Facility operators must report any noncompliance with the Storm Water Permit at the time that the Annual Report is submitted, including 1) a description of the noncompliance and its cause, 2) the period of noncompliance, 3) if the noncompliance has not been corrected, the anticipated time it is expected to continue, and 4) steps taken or planned to reduce and prevent recurrence of the noncompliance. 1997 Permit, Section C(11)(d). The Facility Owners and/or Operators did not report their non-compliance as required.

Last, the Storm Water Permit requires a permittee whose discharges violate the Storm Water Permit Receiving Water Limitations to submit a written report identifying what additional BMPs will be implemented to achieve water quality standards, along with an implementation schedule. 1997 Permit, Receiving Water Limitations C(3) and C(4). Information available to Coastkeeper indicates that the Facility Owners and/or Operators failed to submit the reports



required by Receiving Water Limitations C(3) and C(4) of the 1997 Permit. As such, the Owners and/or Operators are in daily violation of this requirement of the Storm Water Permit.

Information available to Coastkeeper indicates that the Facility Owners and/or Operators have submitted incomplete and/or incorrect Annual Reports that fail to comply with the Storm Water Permit. As such, the Owners and/or Operators are in daily violation of the Storm Water Permit. Every day the Facility Owners and/or Operators conduct operations at the Facility without reporting as required by the Storm Water Permit is a separate and distinct violation of the Storm Water Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. §1311(a). The Facility Owners and/or Operators have been in daily and continuous violation of the Storm Water Permit's reporting requirements every day since at least December 13, 2011. These violations are ongoing, and Coastkeeper will include additional violations when information becomes available, including specifically violations of the 2015 Permit reporting requirements (*see* 2015 Permit, Section XVI.). The Facility Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since December 13, 2011.

IV. RELIEF SOUGHT FOR VIOLATIONS OF THE CLEAN WATER ACT

Pursuant to Section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. § 19.4, each separate violation of the Clean Water Act subjects the violator to a penalty for all violations occurring during the period commencing five years prior to the date of the Notice Letter. These provisions of law authorize civil penalties of up to \$37,500 per day per violation for all Clean Water Act violations after December 13, 2011. In addition to civil penalties, Coastkeeper will seek injunctive relief preventing further violations of the Clean Water Act pursuant to Sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), declaratory relief, and such other relief as permitted by law. Lastly, pursuant to Section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), Coastkeeper will seek to recover its costs, including attorneys' and experts' fees, associated with this enforcement action.

V. CONCLUSION

Coastkeeper is willing to discuss effective remedies for the violations described in this Notice Letter. However, upon expiration of the 60-day notice period, Coastkeeper will file a citizen suit under Section 505(a) of the Clean Water Act for Fox Hills Industries' violations of the Storm Water Permit.



If you wish to pursue settlement discussions, please contact Coastkeeper's legal counsel:

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Sincerely,

A handwritten signature in dark ink, appearing to read "Anthony M. Barnes", is written over a horizontal line.

Anthony M. Barnes
Jason R. Flanders
ATA Law Group
Counsel for Orange County Coastkeeper



SERVICE LIST

VIA U.S. CERTIFIED MAIL – Return Receipt Requested

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Fox Hills Industries, Inc. Notice of Intent Exhibit A

1. Self-Reported Sampling Conducted by Fox Hills Industries, Inc. Demonstrating Noncompliance with BAT/BCT

| Date of Sample | Discharge Point | Constituent | EPA Benchmark Limit (mg/L) | Sample Value (mg/L) | Magnitude of Exceedance |
|----------------|-----------------|-------------|----------------------------|---------------------|-------------------------|
| 02.08.2013 | Back Yard | Copper | 0.0123 | 3.5 | 284.55 |
| 02.08.2013 | Back Yard | Lead | 0.069 | 0.086 | 1.25 |
| 02.08.2013 | Back Yard | Zinc | 0.117 | 0.7 | 5.98 |
| 02.08.2013 | Parking Lot | Zinc | 0.117 | 0.64 | 5.47 |
| 02.08.2013 | Parking Lot | Copper | 0.0123 | 2.3 | 186.99 |
| 12.02.2014 | Back Yard | Copper | 0.0123 | 3.6 | 292.68 |
| 12.02.2014 | Back Yard | Zinc | 0.117 | 0.41 | 3.5 |
| 12.02.2014 | Parking Lot | Zinc | 0.117 | 0.34 | 2.9 |
| 12.02.2014 | Parking Lot | Copper | 0.0123 | 1.9 | 154.47 |
| 09.15.2015 | Back Yard | TSS | 100 | 200 | 2 |
| 09.15.2015 | Back Yard | Zinc | 0.117 | 1.1 | 9.4 |
| 09.15.2015 | Back Yard | Copper | 0.0123 | 6.4 | 520.33 |
| 09.15.2015 | Parking Lot | Zinc | 0.117 | 0.33 | 2.82 |
| 09.15.2015 | Parking Lot | Copper | 0.0123 | 1.2 | 97.56 |
| 12.22.2015 | Back Yard | Zinc | 0.117 | 0.47 | 4.02 |
| 12.22.2015 | Back Yard | Copper | 0.0123 | 1.6 | 130.08 |
| 12.22.2015 | Parking Lot | Zinc | 0.117 | 0.58 | 4.96 |
| 12.22.2015 | Parking Lot | Copper | 0.0123 | .93 | 75.61 |
| 01.06.2016 | Back Yard | Copper | 0.0123 | 1.5 | 121.95 |
| 01.06.2016 | Back Yard | Zinc | 0.117 | 0.43 | 3.68 |
| 01.06.2016 | Parking Lot | Copper | 0.0123 | 2.2 | 178.86 |
| 01.06.2016 | Parking Lot | Zinc | 0.117 | 0.56 | 4.79 |
| 02.18.2016 | Back Yard | Copper | 0.0123 | 1.1 | 89.43 |
| 02.18.2016 | Back Yard | Zinc | 0.117 | 0.39 | 3.33 |
| 02.18.2016 | Parking Lot | Copper | 0.0123 | .98 | 79.67 |
| 02.18.2016 | Parking Lot | Zinc | 0.117 | 0.42 | 3.59 |

Fox Hills Industries, Inc. Notice of Intent Exhibit A

2. Sampling Conducted by Orange County Coastkeeper Demonstrating Non-Compliance with BAT/BCT

| Date of Sample | Discharge Point | Constituent | EPA Benchmark Limit (mg/L) | Sample Value (mg/L) | Magnitude of Exceedance |
|----------------|-----------------|-------------|----------------------------|---------------------|-------------------------|
| 11.20.2016 | Back Yard | N+N | 1.2 | 0.68 | 1.76 |
| 11.20.2016 | Back Yard | Aluminum | 0.75 | 1.2 | 1.6 |
| 11.20.2016 | Back Yard | Copper | 0.0123 | 2.9 | 235.77 |
| 11.20.2016 | Back Yard | Zinc | 0.117 | 0.69 | 5.9 |
| 11.20.2016 | Back Yard | Iron | 1.0 | 3.8 | 3.8 |
| 11.20.2016 | Back Yard | Lead | 0.069 | 0.2 | 2.9 |

3. Sampling Conducted by Fox Hills Industries, Inc. Demonstrating Noncompliance with Water Quality Standards in the Santa Ana Basin Plan

| Date of Sample | Discharge Point | Constituent ¹ | Santa Ana Basin Plan Standard (s.u.) | Sample Value |
|----------------|-----------------|--------------------------|--------------------------------------|--------------|
| 12.19.2013 | Back Yard | pH | 7.0-8.6 6.5-8.5 | 6.51 |
| 12.19.2013 | Parking Lot | pH | 7.0-8.6 6.5-8.5 | 6.49 |
| 12.02.2014 | Back Yard | pH | 7.0-8.6 6.5-8.5 | 2.67 |
| 12.02.2014 | Parking Lot | pH | 7.0-8.6 6.5-8.5 | 3.78 |
| 09.15.2015 | Parking Lot | pH | 7.0-8.6 6.5-8.5 | 6.62 |

¹ There are two applicable Basin Plan Values for pH differing from the EPA Benchmark, related to the Fox Hills Facility: for bays and estuary waters, pH—7.0-8.6 s.u.; for near and surface waters, pH —6.5 8.5 s.u.

EXHIBIT B**Rain Data from Los Alamitos Army Air Field****Near Fox Hills Industries Facility**

12-13-2011 - 12-13-2016

Days with Precipitation over .1

| Date | Precipitation (Inches) |
|-------------|-----------------------------------|
| 1.21.12 | .42 |
| 1.23.12 | .80 |
| 2.15.12 | .2 |
| 2.27.12 | .14 |
| 3.17.12 | .44 |
| 3.18.12 | .25 |
| 3.25.12 | .42 |
| 4.11.12 | .37 |
| 4.13.12 | .51 |
| 4.26.12 | .28 |
| 11.29.12 | .23 |
| 11.30.12 | .26 |
| 12.3.12 | .40 |
| 12.12.12 | .11 |
| 12.13.12 | .28 |
| 12.18.12 | .18 |
| 12.24.12 | 1.08 |
| 12.26.12 | .10 |
| 12.29.12 | .15 |
| 1.24.13 | .65 |
| 2.8.13 | .19 |
| 2.19.13 | .25 |
| 3.8.13 | .52 |
| 5.6.13 | .25 |
| 10.9.13 | .10 |
| 11.21.13 | .17 |
| 11.29.13 | .28 |
| 12.19.13 | .11 |
| 2.6.14 | .11 |
| 2.27.14 | .49 |
| 2.28.14 | 1.00 |
| 3.1.14 | .30 |
| 3.2.14 | .11 |
| 4.2.14 | .15 |
| 4.25.14 | .16 |
| 11.1.14 | .30 |
| 12.2.14 | .93 |
| 12.3.14 | .80 |
| 12.12.14 | 1.52 |
| 12.17.14 | .20 |
| 1.10.15 | .34 |

| Date | Precipitation (Inches) |
|--------------|-----------------------------------|
| 1.11.15 | .59 |
| 2.22.15 | .37 |
| 3.2.15 | .27 |
| 3.7.15 | .19 |
| 5.8.15 | .32 |
| 5.14.15 | .44 |
| 5.15.15 | .32 |
| 7.18.15 | .17 |
| 7.19.15 | .23 |
| 9.15.15 | 1.64 |
| 10.4.15 | .17 |
| 12.19.15 | .16 |
| 12.22.15 | .43 |
| 1.5.16 | .87 |
| 1.6.16 | .82 |
| 1.7.16 | .48 |
| 1.31.16 | .23 |
| 2.17.16 | .34 |
| 3.6.16 | .31 |
| 3.7.16 | .32 |
| 3.11.16 | .32 |
| 4.10.16 | .11 |
| 5.6.16 | .11 |
| 10.17.16 | .26 |
| TOTAL | 66 Days |

1618

OAKLAND CA 946

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Citizen Suit Coordinator
Environment and Natural Resources Division
Law and Policy Section
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